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IN THE

Supreme Court of the United States

October Term, 1963

No. 313

MARION A. STOVER and WEBSTER STOVER,
Appellants,

v.

THE PEOPLE OF THE STATE OF NEW YORK,
Appellee.

On Appeal from the Court of Appeals of the State of New York

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

	PAGE
JURISDICTIONAL STATEMENT	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	3
QUESTIONS PRESENTED	3
STATEMENT OF THE CASE	4
THE QUESTIONS ARE SUBSTANTIAL	7
CONCLUSION	22
APPENDIX A—Opinion of the Court of Appeals of the State of New York	1a
APPENDIX B—General Ordinances of the City of Rye	18a
APPENDIX C—Building Zone Ordinance	19a
APPENDIX D—Local Law No. 1—1951	21a
APPENDIX E—Sanitary Code	27a
APPENDIX F—Defendants' Exhibit A at Trial	29a
APPENDIX G—Remittitur from Court of Appeals	80a
APPENDIX H—Order for Execution of Judgments, County Court, County of Westchester, dated May 22, 1963	83a

PAGE

APPENDIX I—Order for Commitment of Webster Stover, dated May 22, 1963 ..... 85a

APPENDIX J—Stipulation and Consent for Substitution of Counsel 87a

APPENDIX K—Notice of Appeal to the Supreme Court of the United States 88a

APPENDIX L—Stay of Execution of Judgments 92a

TABLE OF AUTHORITIES

Cases:

Berman v. Parker, 348 US 26 (1954) 12, 13, 19
Blackburn v. Alabama, 361 US 199 (1960) 8
Bridges v. California, 314 US 252 (1941) 12, 14, 16

Cantwell v. Connecticut, 310 US 296 (1940) 8, 11, 21
Carlson v. California, 310 US 106 (1940) 8
Chaplinsky v. New Hampshire, 315 US 568 (1942) 11

De Jonge v. Oregon, 299 US 353 (1937) 11

Edwards v. South Carolina, 372 US 229 (1963) 8, 9, 10, 15, 20
Euclid v. Ambler Realty Co., 272 US 365 (1926) 19

Feiner v. New York, 340 US 315 (1951) 12, 16
Fiske v. Kansas, 274 US 380 (1927) 9

Garner v. Louisiana, 368 US 157 (1961) 7, 16, 21
Gitlow v. New York, 268 US 652 (1925) 12, 16
Gomillion v. Lightfoot, 364 US 339 (1960) 18
Grosjean v. American Press Co., 297 US 233 (1936) 15

	PAGE
Hague v. C. I. O., 307 US 496 (1938)	11
Herndon v. Lowry, 301 US 242 (1937)	9
Jamison v. Texas, 318 US 413 (1943)	2
Kovacs v. Cooper, 336 US 77 (1949)	11, 14
Lovell v. Griffin, 303 US 444 (1938)	2, 8
Martin v. Struthers, 319 US 141 (1943)	11, 12, 16
Murdock v. Pennsylvania, 319 US 105 (1943)	13, 15
N. A. A. C. P. v. Alabama, 357 US 449 (1958)	14, 15
National Broadcasting Co. v. United States, 319 US 190 (1943)	8
Near v. Minnesota *ex rel.* Olson, 283 US 697 (1931)	8
Oyama v. California, 332 US 633 (1948)	18
Pennekamp v. Florida, 328 US 331 (1946)	8, 16, 18
Poe v. Ullman, 367 US 497 (1961)	13
Saia v. New York, 334 US 558 (1948)	8
Schenck v. United States, 249 US 47 (1919)	16
Schneider v. Irvington, 308 US 147 (1939)	8, 12, 13, 14, 20
Smith v. California, 361 US 147 (1959)	9, 14
Smith v. Texas, 311 US 128 (1940)	18
Speiser v. Randall, 357 US 513 (1958)	9, 15
Stromberg v. California, 283 US 359 (1931)	8, 11
Thornhill v. Alabama, 310 US 88 (1940)	8, 16, 21
West Virginia v. Barnette, 319 US 624 (1943)	8, 11, 15
Whitney v. California, 274 US 357 (1927)	16
Winters v. New York, 333 US 507 (1948)	8
Yick Wo v. Hopkins, 118 US 356 (1886)	10, 18

PAGE

Other Authorities:

Constitution of the United States:

First Amendment ..... *passim*
Fifth Amendment 12
Fourteenth Amendment 3, 4, 6, 22

McKinney Const. Art. 6, Sec. 6 2
McKinney Penal Law, Art. 1, Sec. 2 3
Meiklejohn, FREE SPEECH (1948) 11

U. S. Code, Title 28, Sec. 1257 (2) 2

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JURISDICTIONAL STATEMENT

Appellants' appeal from the judgment of the Court of Appeals of the State of New York entered on May 9, 1963, affirming the judgments of conviction of the County Court of Westchester County of the State of New York which had affirmed the judgments of conviction entered by the City Court of Rye, County of Westchester of the State of New York and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinions Below

The opinion of the Court of Appeals is reported in 12 N. Y. 2d 462 and is attached hereto as Appendix A. The opinion of the County Court of Westchester County is not reported and a copy of the opinion appears in the Record on Appeal (R. 58). The City Court of Rye delivered no opinions. The judgments and sentences appear at R. 23 and R. 57.

Jurisdiction

The judgment of the Court of Appeals sustaining the appellants' convictions and sentences was entered May 9, 1963. A Notice of Appeal was filed on May 28, 1963.

The Court of Appeals is the Court of last resort in New York in all criminal matters (McKinney Const. Art. 6, Sec. 6).

The cause is one in which the validity of an ordinance in the City of Rye, New York, was drawn in question on the ground of its being repugnant to the Constitution of the United States and the decision of the Court of Appeals was in favor of its validity. The Supreme Court, accordingly, has jurisdiction on appeal under U. S. Code, Title 28, Sec. 1257 (2). *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Jamison* v. *Texas*, 318 U. S. 413 (1943).

Statute Involved

The statute, the validity of which was challenged below by appellants and is challenged here is a General Ordinance of the City of Rye, New York of September 1, 1961. The full text of the Ordinance is appended hereto in Appendix B. Adopted as a regulation of "PUBLIC MORALS AND CONDUCT" it prohibits throughout the City the erection or maintenance of "clotheslines, drying racks, poles or other similar devices for hanging clothes, rags or other fabrics" in front or side yards abutting a street.

Violation of the Ordinance is punishable by a fine of up to $100, or by imprisonment not exceeding 30 days, or by both. Each day that such violation continues constitutes a separate offense. The provision governing the enforcement of the Ordinance is also contained in Appendix B appended hereto. Violation of the Ordinance constitutes a misdemeanor (McKinney Penal Law, Art. 1, Sec. 2).

Questions Presented

The appeal presents three questions under the Constitution of the United States:

1. Whether the application of an ordinance regulating aesthetics so as to prohibit peaceful, political protest is invalid as a restraint on freedom of speech and press in violation of the First and Fourteenth Amendments.

2. Whether under the First and Fourteenth Amendments non-violent political speech can be prohibited because it works an injury to property.

3. Whether the ordinance is invalid on its face because its sole purpose and effect is to prohibit peaceful, political protest in violation of the First and Fourteenth Amendments.

Statement of the Case

Appellants Webster Stover and Marion A. Stover are husband and wife and reside in a one-family house located in a residential district in the City of Rye, New York (hereinafter "City"). For a number of years, appellants had applied to the City to reduce what they believed to be excessive and oppressive taxes on their property. On Grievance Day, in 1956, appellants again applied to the municipal authorities for tax relief (R. 22). In September, 1956 when they were again advised that their application had been refused, they initiated a tax protest on their property. Since 1951, under the City's Building Zone Ordinance, appellants were prohibited from posting signs, bulletin or instruction boards, and billboards on their property, by which means they could have, more decorously perhaps, publicized their grievances (Appendix C). Because appellants did not have available to them these more common means of communication, they protested their assessment by hanging out a clothesline on which were hung clothes, uniforms and other articles. They left this line up and each year for the next five years, upon the receipt of each subsequent denial of tax relief, they added another clothesline.

Five years after the first line was hung by appellants, the City passed the Ordinance here in question which prohibited the maintenance of appellants' clotheslines. The adoption of the Ordinance was first considered by the Common Council of the City on July 19, 1961, and it was subsequently passed on August 16, 1961. Appellant Webster Stover appeared at both meetings and spoke in opposition to the adoption of the Ordinance (R. 21, 47, 48, 60). The Ordinance became effective on September 1, 1961 and was applicable to "existing conditions".

Pursuant to the terms of the Ordinance, on August 30, 1961, appellant Marion A. Stover applied for a permit in order to maintain clotheslines in the side and front yards of the premises. The Building Inspector found no "hardship" and denied the permit (R. 12, 13, 28). On September 7, 1961 appellant Marion A. Stover received a letter from the City Clerk informing her of the denial and directing her to remove the clotheslines (R. 28).

The clotheslines were not removed and on September 18, 1961, an information was filed against appellants, charging them with violation of the Ordinance (R. 3). On September 28, 1961 in the City Court of Rye, without a jury, appellants were tried and convicted (R. 8-23). On October 31, 1961, appellant Webster Stover was sentenced to a $25 fine or five days' imprisonment, and appellant Marion A. Stover received a suspended sentence of an indeterminate nature. Appellant Webster Stover paid the fine on November 4, 1961 (R. 23).

A second information was filed against appellants on November 8, 1961 charging them with a second violation

of the same Ordinance. A second trial was held on November 21, 1961 in the City Court of Rye, without a jury (R. 33-57), and judgments of conviction were entered on November 21, 1961 (R. 31-32). Appellant Webster Stover was sentenced to a $100 fine or thirty days' imprisonment and appellant Marion A. Stover received a suspended sentence of an indeterminate nature (R. 32, 57).

Appeals from both judgments were taken to the County Court of the County of Westchester and they were heard together (R. 58). An order affirming the judgments of convictions was entered on November 21, 1962 by the County Court (R. 71). Appellant Webster Stover was thereupon confined for eleven days in the County Penitentiary, Valhalla, Westchester County. On a Certificate of Reasonable Doubt issued by the Appellate Division of the Supreme Court, Second Judicial Department, appellant Webster Stover was released on $500. bail (R. 73), and a further appeal was taken to the Court of Appeals which sustained the judgments of convictions. A stay of execution of the judgments herein, pending the determination by the Supreme Court of its jurisdiction to entertain this appeal, was ordered by Judge Stanley H. Fuld of the Court of Appeals on May 31, 1963 (Appendix L).

At both trials in the City Court of Rye, appellants moved to dismiss the informations on First and Fourteenth Amendment grounds and both motions were denied (R. 8, 10, 23, 54). In appellants' assignments of error to the County Court, violation of First and Fourteenth Amendment rights were again asserted (R. 61).

The Questions are Substantial

1. Whether non-violent political speech can be prohibited under an ordinance designed to regulate aesthetics, as the Court of Appeals has held, presents a most substantial question. The important issue, never before decided by this Court, is whether protected speech can be prohibited because of its alleged "offensiveness" to community sensibilities, and because of its allegedly depressive effect on property values.

a. Appellants' use of clotheslines to convey a tax protest is a symbolic form of speech protected under the First Amendment. Under the land use regulations of the City, appellants were prohibited from posting signs, bulletin or instruction boards, and billboards on their property, and so they devised this symbolic way of expressing their protest (Appendix C, City of Rye, Building Zone Ordinance, Ch. 9, Art. 4, Sec. 9-4.61).

Their conduct was recognized by the Court of Appeals as a "form of 'peaceful protest'" and as "non-verbal expression," or speech, within the meaning of the First Amendment (Appendix A, pp. 1a, 8a).

The guaranties of the First Amendment have been previously held by this Court to protect numerous forms of speech used to communicate ideas. The common means of speech, such as newspapers, leaflets, loud-speakers, magazines, radio and movies, have been protected, as have more unusual and symbolic forms of speech, such as picketing, flag displays, salutes, banners and sit-ins. *Garner* v.

Louisiana, 368 US 157, 185 (1961) (Harlan, J. concurring) (sit-in); *Saia* v. *New York*, 334 US 558 (1948) (loudspeaker); *Winters* v. *New York*, 333 US 507 (1948) (magazine); *National Broadcasting Co.* v. *United States*, 319 US 190 (1943) (radio); *West Virginia* v. *Barnette*, 319 US 624 (1943) (salute); *Cantwell* v. *Connecticut*, 310 US 296 (1940) (phonographs); *Carlson* v. *California*, 310 US 106 (1940); *Thornhill* v. *Alabama*, 310 US 88 (1940) (picketing); *Schneider* v. *Irvington*, 308 US 147 (1939); *Lovell* v. *Griffin*, 303 US 444 (1938) (leaflets); *Near* v. *Minnesota ex rel. Olson*, 283 US 697 (1931) (newspaper); *Stromberg* v. *California*, 283 US 359 (1931) (flag display).

In dealing with symbolic speech this Court has recognized that such speech is "a primitive but effective way of communicating ideas • • • [it] is a short cut from mind to mind. • • • A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn." *West Virginia* v. *Barnette*, 319 US 624, 632, 633 (1943).

Since this Court has previously recognized symbolic speech to be within the protection of the First Amendment, and since the Court of Appeals has recognized appellants' clotheslines as speech, we submit that appellants' clotheslines must be considered to be protected speech.

b. When the fundamental right of free speech has been infringed, this Court is free to make an independent examination of the whole record. *Edwards* v. *South Carolina*, 372 US 229 (1963); *Blackburn* v. *Alabama*, 361 US 199 (1960); *Pennekamp* v. *Florida*, 328 US 331 (1946). The ordinary presumption that governmental activity is

constitutional does not apply when such activity infringes on speech. The preferred position of this basic right requires that each attempted infringement be subjected to the strictest scrutiny. Only considerations of the greatest urgency can justify a restriction of speech and the State bears the burden of clearly establishing the existence of such a consideration. *Edwards* v. *South Carolina*, 372 US 229 (1963); *Smith* v. *California*, 361 US 147 (1959); *Speiser* v. *Randall*, 357 US 513 (1958); *Herndon* v. *Lowry*, 301 US 242 (1937).

c. In rejecting a traffic or health justification for the Ordinance, the Court of Appeals has construed it to be a regulation of aesthetics (Appendix A, p. 4a).

A grave issue of the proper accommodation of competing interests is therefore presented by the City's application and enforcement of an aesthetic Ordinance so as to prohibit appellants' speech. Whether the Court of Appeals is correct that appellants' classic and pristine assertion of fundamental rights can be prohibited because of the paramount interest asserted by the City in protecting itself against speech, when such speech is expressed in a form which is offensive to community sensibilities, presents a question never before decided by this Court.

In this regard, the crucial constitutional question regarding the prohibition of appellants' speech is not the formal interpretation of the Ordinance, but the application given it. *Herndon* v. *Lowry*, 301 US 242 (1937). The constitutionality of that application must be assessed in terms of the "situation presented". *Fiske* v. *Kansas*,

274 US 380, 384 (1927); *cf., Yick Wo* v. *Hopkins,* 118 US 356 (1886).

Appellants felt their property taxes were oppressive. Their numerous applications for tax relief had been denied. They owned no newspapers, radio or television stations and were prohibited from posting signs, bulletin or instruction boards, or billboards on their property. In this context they devised their own instrument of communication in order to criticize what they considered to be unjust governmental action. In 1956 they hung out a clothesline as their protest against high taxes and they hoisted up a new one each year for five years thereafter. In this way the community became aware of the nature of their protest. The clothesline "spoke" and the village fathers not only listened but also acted. They passed a "clothesline ordinance" which banned lines and poles from front and side yards throughout the City regardless of the purpose for which these devices were used. The Ordinance did not have to be enforced so as to apply to appellants' "speaking lines", but it was. The "situation presented" is therefore, one where the application of the Ordinance to appellants prohibits them from using a method of speech which they had invented.

The Ordinance's application cannot be justified on the ground that a constitutionally permissible accommodation of competing interests has been achieved. Arrayed against this particular application of the police power are weighty and fundamental interests. Here involved is appellants' right to speak non-violently and for a lawful purpose. This right cannot be prohibited nor can the peaceful expression of unpopular views be made criminal. *Edwards* v. *South*

Carolina, 372 US 229 (1963); *De Jonge* v. *Oregon*, 299 US 353 (1937); *Stromberg* v. *California*, 283 US 359 (1931). Appellants' criticism of "village tyrants" is political speech of a classic nature and ranks high on the scale of protected speech under the First Amendment. *West Virginia* v. *Barnette*, 319 US 624, 638 (1943); *Chaplinsky* v. *New Hampshire*, 315 US 568 (1942); *Cantwell* v. *Connecticut*, 310 US 296 (1940); see Meiklejohn, **Free Speech** (1948). There is also at stake the interest of keeping open the channels of communication for the discussion of public issues by all who are affected by governmental action. *Hague* v. *C. I. O.*, 307 US 496 (1939); *Kovacs* v. *Cooper*, 336 US 77, 102 (1949) (Black, J., dissenting). Where appellants do not control the media of communication and where they are even forbidden to post signs, bulletin or instruction boards, or billboards on their own property, this interest must take on heightened significance. Another interest, never before assessed by this Court, is the property owner's use of his own property as a platform for speech (Appendix A, Court of Appeals Opinion) (Van Voorhis, J., dissenting). Lastly, there is the ever present interest of the community to know and receive information. *Martin* v. *Struthers*, 319 US 141, 143 (1943); *Thornhill* v. *Alabama*, 310 US 88, 95, 102 (1940).

Opposed to these interests is the sole interest of the City in preserving property values by means of a regulation establishing some kind of standard of physical beauty. Appellants submit that "such slender grounds" as the City's interest in preserving real estate values cannot provide the justification upon which appellants' "speaking clotheslines" can be prohibited. *West Virginia* v. *Barnette*, 319 US 624, 639 (1943). Appellants do not contest

the right of the City to regulate for aesthetic reasons. There is, indeed, a great need for governments to provide for the beauty which should surround the lives of its citizens. However, appellants submit that the City's interest in aesthetic control hardly constitutes the type of paramount interest required to justify an intrusion into the constitutional sanctuary of free speech. *Martin* v. *Struthers*, 319 US 141 (1943); *Schneider* v. *Irvington*, 308 US 147 (1939).

Paramount state interests justifying restrictions on speech, such as preserving public order (*Feiner* v. *New York*, 340 US 315 (1951)), insuring the proper administration of justice (*Bridges* v. *California*, 314 US 252 (1941)), and protecting the State from overthrow (*Gitlow* v. *New York*, 268 US 652 (1925)) are singularly and conspicuously absent from the City's attempted justification of its prohibition of appellants' speech. They are absent because they do not exist.

The clash of the interests asserted by the appellants and by the City cannot be resolved under the authority of *Berman* v. *Parker*, 348 US 26 (1954). Although a dictum in that case justified the exercise of the police power for the regulation of aesthetics, it did not deal with a resolution of a conflict between First Amendment rights and the police power such as is present here. In *Berman* the Court was faced with the constitutionality of a comprehensive plan for urban redevelopment in which the aesthetic considerations were subsidiary; and in *Berman* the attack on the exercise of the police power was made only on Fifth Amendment grounds. *Id.* at 33. Although it was said that the "concept of public welfare is broad and in-

clusive" the Court there recognized that the scope of the police power was "subject to specific constitutional limitations." *Id.* at 32, 33. The authority of *Berman* has been subsequently recognized as dealing with the scope of the legislature's judgment on economic and business matters. *Poe* v. *Ullman*, 367 US 497, 518 (1961) (Douglas, J., dissenting on other grounds).

Berman has, therefore, never been held to govern the proper accommodation of interests, such as are asserted here. Appellants submit that the application of the Ordinance so as to prohibit their speech violates the "specific constitutional limitation" of the First Amendment.

In the evaluation of these interests, the fact that appellants are still permitted to hang out clotheslines from their back yard does not justify the City's interest in prohibiting them from speaking from their side and front yards. "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *Irvington*, 308 US 147 (1939); *cf.*, *Murdock* v. *Pennsylvania*, 319 US 105 (1943).

The standard used by the Court of Appeals to accommodate the competing interests in this case raises yet another important question of constitutional interpretation. Relying on *Schneider* v. *Irvington*, 308 US 147 (1939), the Court of Appeals holds that since the Ordinance is a regulation of aesthetics and since it bears no "necessary relationship" to speech, it can be applied even though there is a resulting "impact" on speech. Implicit in this reasoning is the assumption that intrusions in the area of

speech are permissible if they are slight. This assumption is clearly incorrect. *Smith* v. *California*, 361 US 147 (1959); *Bridges* v. *California*, 314 US 252 (1941). The fact that speech falls within the ambit of a police regulation which is otherwise permissible does not provide a justification for holding that such speech is outside of the protection of the First Amendment. Indeed, the holding of *Schneider* v. *Irvington*, *supra*, as opposed to its dicta, supports appellants' position here. In *Schneider*, prohibitions on the distribution of handbills were held to be invalid even though they had been justified by State Courts in terms of a municipality's interest in keeping its "streets clean and [in] good appearance." *Schneider* v. *Irvington*, *supra* at 162.

What is really involved is not the "necessity of the relationship" between the regulation and speech, but whether the City's interests are in fact paramount when weighed against First Amendment rights. "The question is whether or not there is a real abridgment of the rights of free speech" resulting from the application of the Ordinance. *Kovacs* v. *Cooper*, 336 US 77, 85 (1949).

It does not matter that "the governmental action challenged may appear to be totally unrelated to protected liberties." *N. A. A. C. P.* v. *Alabama*, 357 US 449, 461 (1958). "In the domain of these indispensable liberties, whether of speech, press or association, the decisions of this Court recognize that the abridgment of such rights, *even though unintended*, may inevitably follow from varied forms of governmental action." *Id.* at 461. (Italics supplied.) Under the reasoning of *N. A. A. C. P.* v. *Alabama*, the relationship between aesthetics and speech becomes inconsequential if speech is abridged by the impact of the Ordinance.

When the administration of breach of the peace statutes (*Edwards* v. *South Carolina*, 372 US 229 (1963)), judicial discovery procedures (*N. A. A. C. P.* v. *Alabama, supra*) and seemingly innocuous tax statutes (*Grosjean* v. *American Press Co.*, 297 US 233 (1936); *Murdock* v. *Pennsylvania*, 319 US 105 (1943); see *Speiser* v. *Randall*, 357 US 513 (1958)) are found to curtail fundamental rights, then it is submitted that the application of the police power here in question must be found to be invalid since it operates to diminish the effective exercise of rights of speech. *West Virginia* v. *Barnette*, 319 US 624 (1943). The subordination of appellants' First Amendment rights to the City's interest in aesthetics is improper under a constitutionally appropriate accommodation of interests.

2. Whether non-violent political speech can be prohibited because it works an injury to property presents a second substantial question.

The exercise of the police power to prohibit non-violent speech has been upheld by the Court of Appeals on the ground that speech can be prohibited if it "works an injury to property" (Appendix A, p. 8a). This novel test enunciates a doctrine never before recognized by this Court. Such a test constitutes a grave departure from all prior tests which this Court has accepted as a proper measure of the constitutionally permissible limits of state power to regulate speech. Appellants contend that the Court of Appeals' test is unconstitutional and that its adoption by the State Court presents an imposing threat to the right of free speech.

As this Court has consistently held, non-subversive speech must constitute a "clear and present danger of substantive evil to the State" before it may be punished. *E.g., Gitlow* v. *New York*, 268 US 652 (1925). "The fact that speech is likely to result in some violence or destruction of property is not enough to justify its suppression. There must be probability of serious injury to the State". *Whitney* v. *California*, 274 US 357, 378 (1927) (Brandeis, J., concurring).

The evil consequence of comment must be "extremely serious" before utterances can be punished. *Pennekamp* v. *Florida*, 328 US 331 (1946). Serious consequences are those that would overthrow the State, *Schenck* v. *United States*, 249 US 47 (1919), create disorderly conduct, breach of the peace, *Feiner* v. *New York*, 340 US 315 (1951), or disrupt the administration of justice. *Bridges* v. *California*, 314 US 252 (1941). The creation of a "minor nuisance" is not enough justification to prohibit speech. *Martin* v. *Struthers*, 319 US 141, 143 (1943). Nor does "the danger of injury to an industrial concern" justify a prohibition on picketing. *Thornhill* v. *Alabama*, 310 US 88, 105 (1940). "Where constitutional rights are involved the proprietory interests of individuals must give way." *Garner* v. *Louisiana*, 368 US 157, 181 (1961) (Douglas, J., concurring).

Clearly, appellants' speech was non-subversive. Moreover, under present standards set by this Court, their speech would not be characterized as presenting an "extremely serious" evil to the State. However, under the new test adopted by the Court of Appeals, appellants' speech is prohibited.

If the Court of Appeals' test is allowed to stand, other types of speech which are protected under the decisions of this Court will become subject to state prohibitions. For example, picketing, since it is designed to injure property, would be absolutely prohibited; sit-ins and other forms of peaceful protest against segregation, since they often interfere with the conduct of business, would be forbidden; and any advocacy of social change, however open and nonviolent, and designed to alter the division of the economic pie, would be silenced.

Where speech under standards set by this Court is protected, and the adoption of a novel test results in the prohibition of such speech in order to maintain property values, then, it is submitted, the novel test must be declared unconstitutional.

3. Whether the Ordinance itself is invalid because its purpose and its effect was to prohibit appellants' speech in violation of their rights under the First Amendment presents another substantial question.

a. The specific evil the Ordinance was designed to remedy does not appear from its express words. It contains no preamble and speaks only of prohibiting the "erection or maintenance of clotheslines, drying poles or other similar devices for hanging clothes, rags, or other fabrics * * *"

As construed by the Court of Appeals the Ordinance is not directed at traffic or fire hazards, but at improving the aesthetic appearance of the neighborhood. Although it is conceivable that some devices for hanging clothes, such as colorful drying poles, might be considered not to be unaesthetic under any standard of beauty, all are prohibited

under the Ordinance (although, curiously enough, the clothes and rags themselves are not prohibited). Clotheslines, it is also said, are not in keeping with the "residential appearance of the city" (Appendix A, p. 4a).

Although the Court of Appeals discovered an aesthetic purpose which was served by the Ordinance, it also found that: "It is a fair inference that adoption of the Ordinance before us was prompted by the conduct and action of the defendants * * *" (Appendix A, p. 3a). The minority recognized that "The origin of this dispute is evidently political in nature * * *" (Appendix A, p. 11a).

This Court is not bound by the Court of Appeals' construction of the Ordinance when basic rights are alleged to have been infringed; in this situation an independent examination by this Court of "both the legal issues and those factual matters with which they are commingled" is in order. *Oyama* v. *California*, 332 US 633, 636 (1948); see, *Pennekamp* v. *Florida*, 328 US 331 (1946).

When the Ordinance itself contains no standard of beauty, when it is justified on the tenuous theory that clotheslines or poles are not in keeping with the residential appearance of a community and indeed, when its true political purpose[1] has been suggested by the Court of Appeals itself, then an independent examination by this Court is clearly necessary.

1. Determination of purpose does not require an examination of legislators' motivations as suggested by the Court of Appeals (Appendix A, p. 3a). It is sufficient to determine it by examining the operative effect of the Ordinance and the manner in which it is administered. See *Gomillion* v. *Lightfoot*, 364 US 339 (1960); *Smith* v. *Texas*, 311 US 128 (1940); *Yick Wo* v. *Hopkins*, 118 US 356 (1886).

Appellants submit that a thorough examination of the record will reveal what the express words of the Ordinance fail to show—that the "evil" sought to be remedied was a political, and not an aesthetic one.

b. The placement of the Ordinance in the City's statutory scheme reveals that the Ordinance was not adopted to further the City's land use or aesthetic controls. The "clothesline ordinance" is a General Ordinance and was adopted as a "Miscellaneous" regulation of "PUBLIC MORALS AND CONDUCT" (Appendix B). It was not adopted as part of the City's Building Zone Ordinance and it was not made a part of the City's architectural controls which govern the appearance of buildings in residential districts (Appendix D). Nor was the hanging of clotheslines made a nuisance under the City's Sanitary Code (Appendix E).

The City's statutory scheme demonstrates that the "clothesline ordinance" was not related to the multiple considerations that underlie the City's own comprehensive zoning plan or its carefully considered and quite detailed existing aesthetic controls. See *Berman* v. *Parker*, 348 US 26 (1954); *Euclid* v. *Ambler Realty Co.*, 272 US 365 (1926). It is submitted therefore, that the Ordinance is what its placement purports it to be, simply a "Miscellaneous" regulation of "PUBLIC MORALS AND CONDUCT", and not a regulation of aesthetics.

c. The standard under which the Building Inspector is authorized to issue permits for the erection and maintenance of clotheslines in side and front yards, is not reasonably related to aesthetics. It allows a permit to issue if the Building Inspector finds that an applicant's non-compliance with the Ordinance will result in "practical hard-

ship or unnecessary difficulty". Necessity and hardship, not beauty, are established as the grounds upon which exceptions can be made under the Ordinance, and it is primarily on these non-aesthetic grounds that the permits have been issued.[2] It is submitted that the lack of relationship between the alleged aesthetic purpose of the Ordinance and the basis upon which permits can and were granted reveals that the real purpose of the Ordinance was unrelated to aesthetic considerations.

d. The "clothesline ordinance" is justified by the Court of Appeals on the ground that it is a "precisely and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed" (Appendix A, pp. 8a, 9a) (citing *Edwards* v. *South Carolina*. 372 US 229 (1963); *Schneider* v. *Irvington*, 308 US 147 (1939)). Appellants submit that no matter how narrowly or precisely drawn, the Ordinance is invalid because its purpose, the prohibition of their speech, is unconstitutional.

If the purpose and effect of the Ordinance is constitutionally impermissible, the fact that only "specific conduct was limited or proscribed" cannot save it. Otherwise, all rights would soon be curtailed on the justification that each intrusion was narrow and precise.

When a State seeks to subject speech to criminal sanctions:

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2. Thirty applications were made. Nine permits were granted on necessity or hardship grounds (A-11, A-12, A-13, A-14, A-16, A-17, A-18, A-20, A-23). Only three permits were granted on aesthetic grounds (A-9, A-10 and A-25). Fourteen applicants had lines in the rear yards and therefore were not in violation of the Ordinance which applied only to front and side yards. Four applicants were denied permits (A-1, A-2, A-3, and Appellants) (Appendix F, Defendants' Exhibit A at Trial).

> "It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.' *Cantwell* v. *Connecticut* [310 US 296, 311 1940)]; *Thornhill* v. *Alabama*, 310 US 88, 105 [1940]. ***And of course that interest must be a legitimate one.*** A state may not 'suppress free communication views, religious or other, under the guise of conserving desirable conditions.' *Cantwell* v. *Connecticut* [310 US 296, 308 (1940)]." *Garner* v. *Louisiana*, 368 US 157, 202, 203 (Harlan, J., concurring). (Italics supplied.)

It is submitted therefore, that the Ordinance must be found to be unconstitutional after an examination of the legal and factual matters present in this case. Each of the following elements demonstrates that the disguised purpose of the Ordinance was to suppress appellants' speech and that its real purpose was not to regulate aesthetics: The evil that was attempted to be remedied was admitted to be a political one.[3] The placement of the Ordinance in the City's statutory scheme shows that it was not a land use or aesthetic regulation. The inclusion in the Ordinance of a permit standard of practical hardship and unnecessary difficulty shows that the issuance of permits is not related to aesthetic considerations. The practical operation under which permits were issued shows that it was not administered to further an aesthetic purpose.

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3. The political purpose of the Ordinance is also made clear by the manner of its enforcement. Two consecutive criminal proceedings were brought against appellants while none were brought against four known violators (R. 44). Also, one permit applicant who had left lines standing pending an appeal to the City's Board of Appeals was not criminally prosecuted; appellants, on the other hand, were subjected to a second trial, while their appeal from the first trial was pending (R. 51, 52, 53).

It is further submitted that because the Ordinance has an illegal purpose, it cannot be justified on the ground that it was narrowly and precisely drawn.

Conclusion

For the reasons given, it is submitted that the decision of the Court of Appeals fails to recognize that:

(1) The application and enforcement of the Ordinance violates appellants' rights of free speech under the First and Fourteenth Amendments.

(2) The prohibition of non-violent, political speech cannot be justified under the First and Fourteenth Amendments on the ground that such speech works an injury to real estate values.

(3) The Ordinance is invalid on its face because its purpose is to prohibit peaceful, political speech in violation of the First and Fourteenth Amendments.

We believe the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A

Opinion of the Court of Appeals, State of New York

STATE OF NEW YORK

COURT OF APPEALS

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

MARION A. STOVER and WEBSTER STOVER,

Appellants.

Decided May 9, 1963

FULD, J.:

The defendants, Mr. and Mrs. Stover, residents of the City of Rye since 1940, live in a 2½-story 1-family dwelling, located in a pleasant and built-up residential district, on the corner of Rye Beach and Forest Avenues. A clothesline, filled with old clothes and rags, made its first appearance in the Stovers' front yard in 1956 as a form of "peaceful protest" against the high taxes imposed by the city. And, during each of the five succeeding years, the defendants added another clothesline to mark their continued displeasure with the taxes. In 1961, therefore, six lines, from which there hung tattered clothing, old uni-

forms, underwear, rags and scarecrows, were strung across the Stovers' yard—three from the porch across the front yard to trees along Forest Avenue and three from the porch across the side yard to trees along Rye Beach Avenue.

In August of 1961, the city enacted an ordinance prohibiting the erection and maintenance of clotheslines or other devices for hanging clothes or other fabrics in a front or side yard abutting a street (General Ordinances, §4-3.7). However, the ordinance provides for the issuance of a permit for the use of such clotheslines if there is "a practical difficulty or unnecessary hardship in drying clothes elsewhere on the premises" and grants a right of appeal to the applicant if a permit is denied.[1]

Following enactment of the ordinance, Mrs. Stover, the record owner of the property, applied for a permit to maintain clotheslines in her yard. Her application was denied because, she was advised, she had sufficient other property available for hanging clothes and she was directed to remove the clotheslines which were in the yards abutting the streets. Although no appeal was taken from this

1. The full text of the ordinance reads in this way (General Ordinance, §4-3.7):

> "*Clothes lines.* No clothes lines, drying racks, poles or other similar devices for hanging clothes, rags or other fabrics shall be erected or maintained in a front yard or side yard abutting a street. If there is a practical difficulty or unnecessary hardship in drying clothes elsewhere on the premises, a permit shall be issued by the City Clerk permitting the use of said front or side yard for such purpose upon approval of and a finding by the Building Inspector that drying of clothes elsewhere on the premises would create a practical difficulty or unnecessary hardship. If a permit is denied, the applicant may appeal to the Board of Appeals of this city. The provisions of this section shall be applicable to existing conditions."

determination and no permit ever issued, the clotheslines were not removed. Relying upon the ordinance, the city thereupon charged the defendants with violating its provisions. They were tried and convicted and their judgments of conviction have been affirmed by the County Court of Westchester County. Upon the trial the defendant Webster Stover disputed the sufficiency of the evidence to connect him with the erection or maintenance of the clotheslines, but he does not do so here, urging instead that the ordinance, as it has been applied to him and his wife, is unconstitutional both as an interference with free speech and as a deprivation of property without due process.[2]

It is a fair inference that adoption of the ordinance before us was prompted by the conduct and action of the defendants but we deem it clear that, if the law would otherwise be held constitutional, it will not be stricken as discriminatory or invalid because of its motivation. (Cf. *Town of Hempstead* v. *Goldblatt*, 9 N Y 2d 101, affd. 369 U. S. 590.) Our problem, therefore, is to determine whether the law violates First Amendment rights or otherwise exceeds the police power vested in a city on the ground that it was enacted without regard to considerations of public health, safety and welfare.

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2. We merely note that the proof of Mr. Stover's participation is more than ample to support the conviction. He not only acknowledged, at a public hearing before the Rye City Council, that he had erected the lines as a protest against his taxes and was leaving them there "until he got some action on his assessment" but he alleged the same thing in a complaint in a declaratory judgment action which he and his wife had instituted against the city.

Appendix A

The People maintain that the prohibition against clotheslines in front and side yards was "intended to provide clear visibility at street corners and in driving out of driveways, and thus avoid and reduce accidents; to reduce distractions to motorists and pedestrians; and to provide greater opportunity for access in the event of fires." Although there may be considerable doubt whether there is a sufficiently reasonabzle relationship between clotheslines and traffic or fire safety to support an exercise of the police power, it is our opinion that the ordinance may be sustained as an attempt to preserve the residential appearance of the city and its property values by banning, insofar as practicable, unsightly clotheslines from yards abutting a public street. In other words, the statute, though based on what may be termed aesthetic considerations, proscribes conduct which offends sensibilities and tends to debase the community and reduce real estate values.

There are a number of early decisions, both in this State (see *People ex rel. Wineburgh Adv. Co.* v. *Murphy*, 195 N. Y. 126) and elsewhere (see, e.g., *Varney & Green* v. *Williams*, 155 Cal. 318; *City of Chicago* v. *Gunning System*, 214 Ill. 628; *City of Passaic* v. *Paterson Bill Posting Adv. & Sign Painting Co.*, 72 N. J. L. 285; *Bryan* v. *City of Chester*, 212 Pa. 259), which hold that aesthetic considerations are not alone sufficient to justify exercise of the police power. But since 1930 this court has taken pains repeatedly to declare that the issue is an open and "unsettled" one in New York. (*People* v. *Rubenfeld*, 254 N. Y. 245, 248-249; see, also, *Perlmutter* v. *Greene*, 259 N. Y. 327, 332; *New York State Thruway Auth.* v. *Ashley Motor Court*, 10 N. Y. 2d 151, 156-157.) In addition, we have ac-

tually recognized the governmental interest in preserving the appearance of the community by holding that, whether or not aesthetic considerations are in and of themselves sufficient to support an exercise of the police power, they may be taken into account by the legislative body in enacting laws which are also designed to promote health and safety. (See, e.g., *Matter of Wulfsohn* v. *Burden*, 241 N. Y. 288, 303; *Dowsey* v. *Village of Kensington*, 257 N. Y. 221, 230; *Perlmutter* v. *Greene*, 259 N. Y. 327, 331-332, *supra*; *Baddour* v. *City of Long Beach*, 279 N. Y. 167, 174; *Matter of Presnell* v. *Leslie*, 3 N Y 2d 384, 389; *New York State Thruway Auth.* v. *Ashley Motor Court*, 10 N Y 2d 151, 157, *supra*.) "Aesthetic considerations", this court wrote in *Dowsey* v. *Village of Kinsington* (257 N. Y. 221, 230, *supra*), "are, fortunately, not wholly without weight in a practical world."

Once it be conceded that aesthetics is a valid subject of legislative concern, the conclusion seems inescapable that reasonable legislation designed to promote that end is a valid and permissible exercise of the police power. If zoning restrictions "which implement a policy of neighborhood amenity" are to be stricken as invalid, it should be, one commentator has said, not because they seek to promote "aesthetic objectives" but solely because the restrictions constitute "unreasonable devices of implementing community policy." (Dukeminier, Zoning for Aesthetic Objectives: A Reappraisal, 20 Law & Contemp. Prob. 218, 231.) Consequently, whether such a statute or ordinance should be voided should depend upon whether the restriction was "an arbitrary and irrational method of achieving an attractive, efficiently functioning, pros-

perous community—and *not* upon whether the objectives were primarily aesthetic." (Dukeminier, *loc. cit.*) And, indeed, this view finds support in an ever-increasing number of cases from other jurisdictions which recognize that aesthetic considerations alone may warrant an exercise of the police power. (See, e.g., *Berman* v. *Parker*, 348 U. S. 26, 33; *General Outdoor Adv. Co.* v. *Dept. of Public Works*, 289 Mass. 149, 187-188, app. dismd. 297 U. S. 725; *Sunad, Inc.* v. *City of Sarasota*, 122 So. 2d 611 [Fla.]; *State ex rel. Civello* v. *New Orleans*, 154 La. 271, 284-285; *Best* v. *Zoning Board of Adjustment*, 393 Pa. 106, 116-117; *State ex rel. Saveland Park Holding Corp.* v. *Wieland*, 269 Wis. 262, 271-272, cert. den. 350 U. S. 841; *Churchill and Tait* v. *Rafferty*, 32 P. I. 580, app. dismd. 248 U. S. 591; see, also, 8 McQuillin, Municipal Corporations [3 ed.], §25.31.) As Mr. Justice Douglas, writing for a unanimous court in *Berman*, put it (348 U. S., at p. 33):

> "The concept of the public welfare is broad and inclusive. * * * The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. * * * If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

Cases may undoubtedly arise, as we observed above, in which the legislative body goes too far in the name of

aesthetics (cf. *Matter of Mid-State Adv. Corp.* v. *Bond*, 274 N. Y. 82; *Dowsey* v. *Village of Kensington*, 257 N. Y. 221, *supra;* Dukeminier, Zoning for Aesthetic Objectives: A Reappraisal, 20 Law & Contemp. Prob. 218, 231) but the present, quite clearly, is not one of them. The ordinance before us is in large sense regulatory rather than prohibitory. It causes no undue hardship to any property owner, for it expressly provides for the issuance of a permit for clotheslines in front and side yards in cases where there is practical difficulty or unnecessary hardship exists in drying clothes elsewhere on the premises. Moreover, the ordinance imposes no arbitrary or capricious standard of beauty or conformity upon the community. It simply proscribes conduct which is unnecessarily offensive to the visual sensibilities of the average person. It is settled that conduct which is similarly offensive to the senses of hearing and smell may be a valid subject of regulation under the police power (see, e.g., *People* v. *Rubenfeld*, 254 N. Y. 245, *supra*), and we perceive no basis for a different result merely because the sense of sight is involved.

Nor is there any warrant or justification for a charge—which seems to have been abandoned on this appeal—that the ordinance is being enforced solely against the defendants or that there is a pattern of discrimination consciously being practiced against them. As the court below noted, the building superintendent testified, without contradiction, that all applications for permits were checked and investigated, that other applications for permits had been denied and that the defendants were the only persons who refused to remove clotheslines violative of the ordinance.

Appendix A

Having concluded that the ordinance here in question is validly grounded on a proper exercise of the police power, we turn to the defendants' principal contention, that it is invalid as applied to them because it constitutes an unconstitutional infringement of their freedom of speech. The defendants erected the six clotheslines on their property as a protest against their tax assessment. This form of nonverbal expression is, we shall assume, a form of speech within the meaning of the First Amendment. (See *Stromberg* v. *California*, 283 U. S. 359, 369 [exhibition of red flag]; *Board of Educ.* v. *Barnette*, 319 U. S. 624, 632-633 [flag salute]; *Garner* v. *Louisiana*, 368 U. S. 157, 201 [sit-in demonstration] [*per* Harlan, J., concurring].) However, it is perfectly clear that, since these rights are neither absolute nor unlimited (see, e.g., *Kovacs* v. *Cooper*, 336 U. S. 77; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *Stromberg* v. *California*, 283 U. S. 359, 368, *supra*; *Gitlow* v. *New York*, 268 U. S. 652), they are subject to such reasonable regulation as is provided by the ordinance before us. Although the city may not interfere with nonviolent speech, it may proscribe conduct which incites to violence or works an injury on property, and the circumstance that such prohibition has an impact on speech or expression, otherwise permissible, does not necessarily invalidate the legislation.

It must be borne in mind that the ordinance here in question is, in the language of a recent Supreme Court case (*Edwards* v. *South Carolina*, 372 U. S. 229, 236), a "precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be

limited or proscribed." (See, also, *Schneider* v. *State*, 308 U. S. 147, 160-161.) As the court aptly observed in the *Schneider* case (308 U. S. 147, 160-161, *supra*), "a person could not exercise [his freedom of speech] by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

This reasoning is equally applicable to the case before us. The prohibition against clotheslines is designed to proscribe conduct which offends the sensibilities and tends to depress property values. The ordinance and its prohibition bear "no necessary relationship" to the dissemination of ideas or opinion and, accordingly, the defendants were not privileged to violate it by choosing to express their views in the altogether bizarre manner which they did. It is obvious that the value of their "protest" lay not in its message but in its offensiveness.

The judgments appealed from should be affirmed.

Appendix A

VAN VOORHIS, J. (dissenting):

My concern in this case is not with limitation of free speech nor whether aesthetic considerations are enough in themselves to justify zoning regulations in prescribed instances, but with the extent to which a municipality can go in restricting the use of private property. The ordinance whose validity is now being upheld prohibits the erection and maintenance of clotheslines in a front or side yard abutting a street. Exceptions may be granted, and we were told upon the argument that 26 exceptions have been allowed in Rye, with the practical result that this ordinance is enforced against few others, if any, than the appellants. Even if that be held not to undermine the ordinance, it seems to me to exceed zoning powers for municipalities such as this to dictate to owners of houses and lots where they may put their clotheslines. The validity of ordinances may be tested in court according to whether the exercise of power delegated to the municipality is reasonable or arbitrary (*People ex rel. City of Olean* v. *Western N. Y. & Pa. Traction Co.*, 214 N. Y. 526; *Commissioners of Palisades Interstate Park* v. *Lent*, 240 N. Y. 1). In the case last cited it was said that "What is reasonable is in large part tested by what is ordinary usage and common experience." (p. 8). What has happened here is that these defendants conceived the unusual idea of hanging what the majority opinion describes as "tattered clothing, old uniforms, underwear, rags and scarecrows" across their yard as a form of protest against the amount of their taxes. The city, at the instance of other residents in the area, fought back by adopting this ordinance from the operation of which

almost every other property owner applying for a permit has been excepted. Although the origin of this dispute is evidently political in nature, the validity of this ordinance is sought to be upheld entirely on the basis of aesthetic considerations, e.g., that the eye is offended by what hangs from these clotheslines. No cases have been cited from this or any other jurisdiction holding that a municipal corporation or political subdivision can direct house and lot owners where they shall hang their clothes. Aesthetic considerations, in a certain sense, underlie all zoning, usually in combination with other factors with which they are interwoven. Lot area, setback and height restrictions, for example, are based essentially on aesthetic factors. Occasionally public safety considerations are blended with aesthetics, such as the tendency of billboards to distract the attention of automobile drivers or of high hedges to block their view at street intersections. Aesthetic factors are given effect, in such cases, but have been limited to specific situations and not extended to anything which offends the taste of the neighbors or of the local legislature. One may assume, for example, that a clothesline ordinance would be invalid which permitted the hanging of white but not red blankets, or allowed shirts to be put out to dry after washing but not underwear. Probably, at least until the next step in zoning law, a municipality would be held unauthorized to direct house owners what colors their homes should be painted, or what kinds of trees or shrubbery they should be allowed to grow and where they should be planted. Nevertheless if they can be told where to hang their clothes in their yards, these items would be but a

small step beyond the present holding, or to prescribe what architectural designs should be adopted so as to harmonize with the designs of the neighbors. To direct by ordinance that all buildings erected in a certain area should be one story ranch houses would scarcely go beyond the present ruling as a question of power, or to lay down the law that they should be all of the same color, or of different colors, or that each should be of one or two or more color tones as might suit the aesthetic predilections of the city councillors or zoning boards of appeal.

This ordinance is unrelated to the public safety, health, morals or welfare except insofar as it compels conformity to what the neighbors like to look at. Zoning, important as it is within limits, is too rapidly becoming a legalized device to prevent property owners from doing whatever their neighbors dislike. Protection of minority rights is as essential to democracy as majority vote. In our age of conformity it is still not possible for all to be exactly alike, nor is it the instinct of our law to compel uniformity wherever diversity may offend the sensibilities of those who cast the largest numbers of votes in municipal elections. The right to be different has its place in this country. The United States has drawn strength from differences among its people in taste, experience, temperament, ideas, and ambitions as well as from differences in race, national or religious background. Even where the use of property is bizarre, unsuitable or obstreperous it is not to be curtailed in the absence of overriding reasons of public policy. The security and repose which come from protection of the right to be different in matter of aesthetics, taste, thought, ex-

pression and within limits in conduct are not to be cast aside without violating constitutional privileges and immunities. This is not merely a matter of legislative policy, at whatever level. In my view, this pertains to individual rights protected by the Constitution.

Aesthetic factors have always played an important part in zoning, as they have in the licensing of television and radio. Theatre and entertainment, as well as other forms of music, art, philosophy and literature are closely involved in aesthetics, which are not a veneer but are fundamental to the human mind and spirit. Nor are aesthetics confined to landscape gardening, tract development or architectural design. The avoidance by courts, sometimes seemingly to the point of evasion, of sustaining the constitutionality of zoning solely on aesthetic grounds has had its origin in a wholesome fear of allowing government to trespass through aesthetics on the human personality. In this instance, hanging tattered clothing, underwear, rags and scarecrows on a clothesline can scarcely be regarded as articulating a protest against excessive taxation, but to prohibit it by law upon the ground that it offends the aesthetic sensibilities of the neighbors or of the public officials of the municipality means—unless well defined and effectively enforced limits are placed upon this power to rule aesthetics by government—opening the door to the invasion by majority rule of a great deal of territory that belongs to the individual human being. It was once said of a famous lady of history that she had so much taste, and all of it so bad. Individual taste, good or bad, should ordinarily be let alone by government.

Appendix A

In authorizing the regulation of setback lines, yard areas, height of buildings and many permitted uses, the dominant factor has often been and should be aesthetic. But it is important not to allow general or unlimited power in government to regulate aesthetics in zoning or other departments of municipal administration. Extending aesthetic factors to the regulation of clotheslines suggests that zoning power, in the future, may extend to many other types of regulation also, since municipal boards and councils are being authorized in large degree to impose their ideas of aesthetics, and may be expected to do so on an expanding scale to placate the wishes of other property owners who constitute a larger segment of the electorate. Unless clotheslines create traffic or health hazards, it seems to me that they should not be interfered with by law in suburban or rural areas. More important than this, however, does it seem that extensions of categories of local legislation for purely aesthetic purposes should be defined and limited, and, if they are to be enlarged, it should not be under reasoning which sets no ascertainable bounds to what can be done or attempted under this power.

The judgments of conviction of appellants should be reversed and the charges against them dismissed.

Chief Judge Desmond and Judges Dye, Burke, Foster and Scileppi concur with Judge Fuld; Judge Van Voorhis dissents in an opinion.

Judgment affirmed.

Appendix A

Certification of Opinion by State Reporter of the Court of Appeals of the State of New York

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, JAMES M. FLAVIN, State Reporter of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of People *v.* Stover decided by the Court of Appeals on the 9th day of May 1963, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

IN WITNESS WHEREOF, I have hereunto affixed my signature as State Reporter, at the City of Albany, in the State of New York, this 19th day of July 1963

(Seal)

JAMES M. FLAVIN
State Reporter of the State of New York

Attest:

L. S. RAYMOND J. CANNON
Clerk of the Court of Appeals

Appendix A

Certification of State Reporter by Judge of the Court of Appeals of the State of New York

STATE OF NEW YORK }
COURT OF APPEALS } ss.:

I, MARVIN R. DYE, Senior Associate Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that RAYMOND J. CANNON is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that JAMES M. FLAVIN is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of People *v.* Stover decided by the said Court of Appeals on the 9th day of May 1963, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of RAYMOND J. CANNON, as clerk of said court, appended thereto is the true and genuine signature of said RAYMOND J. CANNON,

and the signature of JAMES M. FLAVIN, as State Reporter, appended thereto is the true and genuine signature of said JAMES M. FLAVIN.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall in the City of Albany and State of New York on the 22nd day of July in the year one thousand nine hundred and sixty three

MARVIN I. DYE
Senior Associate Judge of the
Court of Appeals of the
State of New York

APPENDIX B

General Ordinances of the City of Rye

Chapter 4—PUBLIC MORALS AND CONDUCT

Article 3—Miscellaneous

Sec. 4-3.7. Clothes lines. No clothes lines, drying racks, poles or other similar devices for hanging clothes, rags or other fabrics shall be erected or maintained in a front yard or side yard abutting a street. If there is a practical difficulty or unnecessary hardship in drying clothes elsewhere on the premises, a permit shall be issued by the City Clerk permitting the use of said front or side yard for such purpose upon approval of and a finding by the Building Inspector that drying of clothes elsewhere on the premises would create a practical difficulty or unnecessary hardship. If a permit is denied, the applicant may appeal to the Board of Appeals of this city. The provisions of this section shall be applicable to existing conditions.

Chapter 7—MISCELLANEOUS

Article 2—Enforcement

Sec. 7-2.3. Penalties. Any person who shall violate or fail, neglect or refuse to comply with any provision of Chapters 2, 3, 4, 5 and 7 or any rule, regulation, order or special direction duly made thereunder shall upon conviction thereof, be punished by a fine of not more than one hundred dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, and each day such violation shall continue shall constitute a separate offense.

APPENDIX C

Building Zone Ordinance

Chapter 9—BUILDING ZONE ORDINANCE

Article 4—Use Regulations

Sec. 9-1.21 Sign. Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge, or insignia of any government or government agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.

Story. • • •

Sec. 9-4.61 Signs in Residence Districts. The following types of signs shall be permitted in Residence Districts, if projecting not more than 6 inches in front of the required front yard line and located not more than 6 feet above natural grade, and if facing upon or placed to be seen primarily from the street that provides required access to the lot:

(a) Signs not over 1 square foot in area identifying the name or house number of the occupant, or the presence of a permitted professional or home occupation.

(b) One public or semi-public bulletin or instruction board not over 6 square feet in area, or one sign not over 6 square feet in area facing each street over 50 feet in width identifying permitted religious uses or uses permitted subject to additional standards and

requirements, provided that letters are not over 3 inches in height.

(c) Temporary real estate signs not over 2 square feet in area for single lots, or, for subdivisions, in place of signs for individual lots, a sign or signs aggregating not more than 2 square feet for each lot with no single sign to exceed 16 square feet, advertising only the sale or lease of the lot or subdivision upon which they are maintained.

(d) Any public display of goods made or sold and any billboard or other advertising device other than the above shall be prohibited.

Sec. 9-4.72 Uses Prohibited in all Districts. The following uses are specifically prohibited in all districts as being inconsistent with the character of Rye as a dominantly residential city:

(a) Any industry, use, operation, or process which, when conducted under proper and adequate conditions and safeguards, is likely at any time to produce such nuisances as obnoxious smoke, dust, dirt, fly ash, glare, or heat, offensive odor, corrosive, toxic or noisome fumes or gases, offensive noise or vibration, or dangerous or objectionable electrical radiation or interference, or dangerous or hazardous condition due to risk of fire or explosion.

(b) Billboards, and advertising signs except advertising signs permitted in Section 9-4.6.

(c) In addition to the above uses prohibited because of inconsistency with the character of Rye, no residential structure shall be erected and no structure shall be converted to residential use in any district on land of such a character that it cannot be used for residential purposes without danger to health because of inadequate drainage, periodic flooding, high water table, inadequate access for fire, police, or ambulance equipment, or otherwise.

APPENDIX D

Local Law No. 1 — 1951

Section 1. The Common Council hereby finds that excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of buildings erected in or in the immediate vicinity of a residential neighborhood adversely affects the desirability of the immediate area and neighboring areas for residential purposes and by so doing impairs the benefits of occupancy of existing residential property in such areas, impairs the stability and value of both improved and unimproved real property in such areas, prevents the most appropriate development of such areas, produces degeneration of residential property in such areas with attendant deterioration of conditions affecting the health, safety and morals of the inhabitants thereof, and destroys a proper relationship between the taxable value of real property in such areas and the cost of municipal services provided therefor. It is the purpose of this local law to prevent these and other harmful effects of such exterior appearance of buildings

erected in residential neighborhoods and thus to promote and protect the health, safety, morals and general welfare of the community.

Section 2. There is hereby created a Board of Architectural Review which shall consist of five (5) members who shall serve without compensation. All members of the Board shall be residents of the City and shall be specially qualified by reason of training or experience in architecture, land development, city planning, real estate, landscape architecture or other relevant business or profession or by reason of civic interest and sound judgment to judge of the effects of a proposed building upon the desirability, property values and development of surrounding areas; and at least one member of the board shall be a registered architect in the State of New York. The members of the board shall be appointed and the chairman thereof shall be designated by the Mayor and approved by the Council. The term of office of each member shall be three (3) years, except that the initial appointments of two members shall be for one year, of two members for two years and of one member for three years. The Mayor shall have the power to remove any member for cause after public hearing. Vacancies shall be filled for the unexpired term of any member whose place has become vacant. The Building Inspector shall act as Secretary of the Board.

Section 3. Meetings of the Board of Architectural Review shall be held at the call of the Chairman and at such other times as the Board may determine, but shall be held within eighteen days of the date of any application for

building permit referred to the board as required in Section 4 of this local law. The Chairman, or in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. A majority of said board shall constitute a quorum for the transaction of business. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall also keep records of its examinations and other official actions. The board shall have power from time to time to adopt, amend and repeal rules and regulations not inconsistent with law or the provisions of this local law, governing its procedure and the transaction of its business, and for the purpose of carrying into effect the standards outlined in Section 5 hereof.

Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the board and shall be a public record.

Section 4. Every application for a building permit for the construction, reconstruction or alteration of a one or two family dwelling, or for any other structure in excess of 2,000 cubic feet of cubical contents proposed for construction within the City of Rye shall be referred by the Building Inspector to the Board of Architectural Review within 3 days of the date of the application provided it conforms in all respects to all other applicable laws and ordinances.

Appendix D

Section 5. The Board of Architectural Review may disapprove any building permit referred to it, provided that such disapproval shall be by the unanimous vote of all of the members of said board present at any meeting where said vote is taken, and provided that the board finds that the building for which the permit was applied would, if erected, be so detrimental to the desirability, property values or development of the surrounding residential area as to provoke one or more of the harmful effects set forth in Section 1, by reason of:

(a) excessive similarity to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application, facng upon the same street and within 250 feet of the proposed site, in respect to one or more of the following features of exterior design and appearance.

(1) apparently identical facade,

(2) substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the facade facing the street, includng reverse arrangement, or

(3) other significant identical features, such as but not limited to, material, roof line and height or other design elements, provided that a finding of excessive similarity shall state not only that such similarity exists, but further that it is of such a nature as to be expected to provoke beyond reasonable doubt one or more of the harmful effects set forth in Section 1; or

Appendix D

(b) excessive dissimilarity or inappropriateness in relation to any other structure existing or for which a permit has been issued, or to any other structure included in the same permit application facing upon the same street and within 250 feet of the proposed site in respect to: one or more of the following features:

(1) cubical contents,

(2) gross floor area,

(3) height of building or height of roof,

(4) other significant design features such as material or equality of architectural design;

provided that a finding of excessive dissimilarity or inappropriateness shall state not only that such dissimilarity or inappropriateness exists but further that it is of such a nature as to be expected to provoke beyond reasonable doubt one or more of the harmful effects set forth in Section 1, and that the finding is not based on personal preference as to taste or choice or architectural style.

Section 6. The Building Inspector shall refuse any building permit application disapproved as provided in Section 5. If the Board of Architectural Review shall approve or fail to act on any building permit application referred to it under Section 4, within eighteen days of the date of such application, the Building Inspector shall forthwith issue the permit as applied for.

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Appendix D

Section 6a. In addition to the powers hereinbefore given to the Board of Architectural Review, said powers are hereby extended so as to include the authority to examine, review, approve or disapprove applications for permits for signs, as regulated by the provisions of Section 9-4.7 of the Building Zone Ordinance, as amended, and Section 1 of Article 17 of the Building Code, as amended—or other pertinent provisions of said Building Zone Ordinance and/or Building Code which by their terms are subject to the action of said Board of Architectural Review.

Section 7. Any person aggrieved by the action of the Board of Architectural Review in disapproving a building permit application and of the building inspector in denying such permit because of such disapproval may take an appeal therefrom to the duly constituted Board of Appeals of the City of Rye, in the same manner as is provided for zoning appeals, and such Board of Appeals after proceeding in the same manner as is provided for zoning appeals and with the same power and authority therein vested in passing upon appeals before it under the provisions of law and the Building Zone Ordinance of the City of Rye, and in the exercise thereof may reverse or affirm the Action of the Board of Architectural Review and of the Building Inspector.

Section 8. This local law shall change or supersede Article 1 of Chapter 8 of the Building Code of the City of Rye, as heretofore enacted and from time to time amended and subdivision 24 of Section 20 of the General City Law of the State of New York, being Chapter 26 of the laws of

1909 as the same from time to time has been amended, to the extent that the provisions thereof conflict with or are contrary to the provisions of this local law.

Adopted August 1, 1951.

As amended by Local Law No. 2—1951
Became a law October 10, 1951.
As further amended by Local Law No. 1—1952
Became a law November 19, 1952.
As further amended by Local Law No. 1—1957
Became a law July 30, 1957.

APPENDIX E

Sanitary Code

Chapter 10—SANITARY CODE

Article 7—Miscellaneous

Sec. 10-8.3 Nuisances. Whatever is dangerous or detrimental to human life or health, and whatever renders or is likely to render soil, air, water or food impure or unwholesome, are declared to be nuisances and to be illegal. In addition, the following acts, conditions and things are specifically declared to constitute nuisances:

(a) The deposit or accumulation of house refuse, offal, garbage, excrement, dead animals or other offensive matter upon any private property; the storage of putrid or decaying animal or vegetable matter

in any house, cellar, out-building, vault or other receptacle (save in properly constructed and duly authorized cesspools or privy vaults); the overflow of any foul liquids or the escape of any gases to any extent hazardous to health or offensive to persons living or passing in the vicinity thereof;

(b) Any building or part thereof which is unclean or overcrowded or not provided with adequate means of ingress and egress, or not sufficiently supported, ventilated, provided with toilet facilities and water, sewered, drained or lighted;

(c) A polluted well, spring or stream, or the pollution of any body of water which is or may be used for drinking purposes;

(d) The discharge of sewage from any house or building into or upon any street, public place, stream, ditch or other water course, surface or subsurface ground-water drain or storm-water drain.

(e) Dogs running at large—repealed. See general ordinance, Section 6-3.5.

APPENDIX F

Defendants' Exhibit A at Trial

Exhibit A—1

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner James N. Conroy

Street Address of Property 16 Radcliff Ave., Rye, N. Y.

Telephone Number WO 7-1502

Date Sept. 1—1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

On corner—No back yard. Must use side yard.

May T. Conroy

Appendix F — Exhibit A—1

Building Inspector's Report

Re: James N. Conroy
16 Radcliff Ave.
Blk 70A, Lots 17/19

Property is located on the southwest corner of Radcliff Ave. & Park Street.

Present clothes line extends from the house to a metal pole located about 2½' from the paved area of Park Street, and is located over the grassed sidewalk area which is City Property.

It is my recommendation that the owner be notified that the line be moved from its present location to between the rear of the residence and the existing garage in the rear yard. This is a wide area, but I feel it would be less objectionable and the same length could be had 2 or 3 shorter lines in this rear yard.

Edw. J. Langeloh
Bldg. Insp.

9/7/61

Appendix F — Exhibit A—1

Letter of Denial

Mr. James N. Conroy
16 Radcliff Avenue
Rye, New York

September 13, 1961

Re: "Clothesline" ordinance
Block 70A, Lots 17/19

Dear Mr. Conroy:

Our Building Inspector conducted an inspection of your property above indicated in connection with your application dated September 1, 1961, for a permit to allow clothes drying in a front or side yard abutting a street, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector reports that your property is located at the southwest corner of Radcliff Avenue and Park Street; that your present clothesline extends from the house to a metal pole located about two and a half feet from the paved area of Park Street, and it is located over the grassed sidewalk area which is City property. He recommends that the clothesline be relocated to the area between the rear of your residence and the existing garage in the rear yard. The Building Inspector ventures the opinion that a clothesline in this latter location would be less objectionable, and the same clothes drying facilities could be attained by the use of two or three shorter clotheslines in the rear yard specified.

It is asked that you take immediate steps to effect the recommended changes in order to comply with the previously indicated section of the General Ordinance. Please communicate with Building Inspector Langeloh at the Square House (Wo. 7-5400) if you desire any further information regarding this matter.

I would appreciate your advice regarding the steps you are taking in this connection.

Cordially,

R. Fred Talento,
City Clerk

RFT:nm

Appendix F — Exhibit A—1

Second Letter of Denial

September 28, 1961

Mr. James N. Conroy
16 Radcliff Avenue
Rye, New York

Re: "Clothesline" Ordinance

Dear Mr. Conroy:

Our Building Inspector re-inspected your property at the above address in connection with your application for a permit to allow clothes drying facilities on your premises, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector reports that the present location of your clothesline is in violation of the aforesaid Ordinance and a permit cannot be issued therefore unless same is relocated along the lines he previously recommended to you. However, the Clothesline Ordinance above referred to provides that an applicant may appeal to the Board of Appeals of this City in this connection. If you wish to register such an appeal, please advise and I shall take the necessary steps to have same presented to the Board.

Cordially yours,

R. Fred Talento,
City Clerk

RFT:nm

Appendix F

Exhibit A—2

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Roger W. Stallings

Street Address of Property 23 Henry St.

Telephone Number T. E. 5-1453

Date September 5—61

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

Do not have a dryer. No other place to dry unless you want me to hang clothes on the front street.

Mrs. R. W. Stallings

Apendix F — Exhibit A—2

Building Inspector's Report

Roger W. Stallings
23 Henry St.,
Block 122 Lots 51A to 53A

Property is located on the Northeast corner of Henry Street & York Ave.

Present clothes line is in front of garage doors, facing York Ave. Front of house faces York Avenue. Rear of house faces east and a large lot.

Would recommend that line be moved and relocated from the southeast corner of the house and extend to a small tree on the easterly property line.

Edw. J. Langeloh

Sept. 11, 1961.

Apendix F — Exhibit A—2

Letter of Denial

September 15, 1961

Mr. Roger W. Stallings
23 Henry Street
Rye, New York

Dear Mr. Stallings:

Re: "Clothesline" ordinance
Block 122, Lots 51A to 53A

Our Building Inspector conducted an inspection of your property above indicated in connection with your application dated September 5, 1961, for a permit to allow clothes drying in a front or side yard abutting a street, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector reports that your property is located at the northeast corner of Henry Street and York Avenue; that the front of your home faces York Avenue and the clothesline is presently located in front of the garage doors facing this street. He recommends that the clothesline be relocated from the southeast corner of the house and extended to a small tree on the easterly property line.

It is asked that you take immediate steps to effect the recommended changes in order to comply with the previously indicated section of the General Ordinance. Please communicate with Building Inspector Langeloh at the Square House (Wo. 7-5400) if you desire any further information regarding this matter. I would appreciate your advice regarding the steps you are taking in this connection.

Cordially,

R. Fred Talento,
City Clerk

RFT:nm

Apendix F — Exhibit A—2

Second Letter of Denial

September 28, 1961

Mr. Roger W. Stallings
23 Henry Street
Rye, New York

Re: "Clothesline" Ordinance

Dear Mr. Stallings:

Our Building Inspector re-inspected your property at the above address in connection with your application for a permit to allow clothes drying facilities on your premises, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector reports that the present location of your clothesline is in violation of the aforesaid Ordinance and a permit cannot be issued therefore unless same is relocated along the lines he previously recommended to you. However, the Clothesline Ordinance above referred to provides that an applicant may appeal to the Board of Appeals of this City in this connection. If you wish to register such an appeal, please advise and I shall take the necessary steps to have same presented to the Board.

Cordially yours,

R. Fred Talento,
City Clerk

RFT:nm

Appendix F

Exhibit A—3

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Marshall Cornine Jr.

Street Address of Property 23 La Salle Ave
Rye, New York

Telephone Number Te 5-0816

Date September 6, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

The air currents are better with my clothes line hung east to west on my back property line. The line abutting La Salle Ave.

Jane H. Cornine

Dear Mr. Langeloh:—

I will not be at home before 4 Pm on any day.

Thank you

J H C

Appendix F — Exhibit A—3

Building Inspector's Report

Re: Marshall Cornine Jr.
23 La Salle Ave.
Blk 100D, Lots 72B/76B, 89
Blk 100D, Lots 72A/76B.

Lots 72A/76B is improved with a residence thereon.
Lots 72B/76B is a vacant Lot.

Each of the lots is assessed as a seperate parcel, and are adjacent.

There exists a Revolving clothes drying rack in the rear yard of Lot 72A to 76A which is permitted.

The clothes line running East to West is located on lot 89, which is part of the vacant parcel which is not built upon. It is my opinion that this is an illegal use inasmuch as it is not an accessory use due to fact that there is no residence on this lot. Lots 72A/76A, is located on the N. E. corner of Glen Oaks Drive & La Salle Ave. Lot 72B/76B, 89 is located adjacent on the Easterly side of La Salle Av.

I do not think, under the above circumstances that a permit should be issued for this line on Lot 89.

Edw. J. Langeloh
Bldg. Insp.

9/7/61

Appendix F — Exhibit A—3

Letter of Denial

September 13, 1961

Mr. Marshall Cornine, Jr.
23 LaSalle Avenue
Rye, New York

Re: "Clothesline" ordinance
Block 100D, Lots 72B/76B, 89
Block 100D, Lots 72A/76A

Dear Mr. Cornine:

Our Building Inspector conducted an inspection of your property above indicated in connection with your application dated September 6, 1961, for a permit to allow clothes drying in a front or side yard abutting a street, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector reports as follows:

"Each of the lots is assessed as a separate parcel, and are adjacent.

"There exists a revolving clothes drying rack in the rear yard of Lot 72A to 76A which is permitted.

"The clothes line running East to West is located on lot 89, which is part of the vacant parcel which is not built upon. It is my opinion that this is an illegal use inasmuch as it is not an accessory use due to the fact that there is no residence on this lot. Lots 72A/76A is located on the northeast corner of Glen Oaks Drive and LaSalle Ave. Lot 72B/76B, 89 is located adjacent on the Easterly side of LaSalle Avenue."

Appendix F — Exhibit A—3

The Building Inspector ventures the opinion that under the circumstances, your request for a permit as indicated in your application should be denied, and that the clothesline in use on Lot 89 as aforestated should be removed.

It is asked that you take immediate steps to effect the recommended changes in order to comply with the previously indicated section of the General Ordinance. Please communicate with Building Inspector Langeloh at the Square House (Wo. 7-5400) if you desire any further information regarding this matter.

I would appreciate your advice regarding the steps you are taking in this connection.

Cordially,

R. Fred Talento,
City Clerk

RFT:nm

Appendix F — Exhibit A—3

Second Letter of Denial

September 28, 1961

Mr. Marshall Cornine, Jr.
23 LaSalle Avenue
Rye, New York

Re: "Clothesline" Ordinance

Dear Mr. Cornine:

Our Building Inspector re-inspected your property at the above address in connection with your application for a permit to allow clothes drying facilities on your premises, pursuant to Section 4-3.7 of the General Ordinances of the City of Rye as last amended.

The Building Inspector advises that if you maintain said clothes drying facilities at the present location in the rear yard such facilities will be in compliance with the aforesaid Ordinance. I have been directed therefore to grant a permit for same.

Many thanks for your kind cooperation in this matter.

Cordially,

R. Fred Talento,
City Clerk

RFT:nm

Appendix F

Exhibit A—9

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Mr. A. Tutolo

Street Address of Property 16 Elizabeth St., Rye, N. Y.

Telephone Number WO 7-3824

Date 9/1/61

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

Cause of Dust and other stuff in air

Emil Tutolo

See Caputo (Tenant) Attached

Appendix F — Exhibit A—9

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner I am a tenant in the first floor apartment of house owned by Mrs. M. Tutolo

Street Address of Property 16 Elizabeth St.

Telephone Number WO 7-1842

Date August 31, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

The front, back and sides of my house are all visible from the street—My wife has been hanging clothes under the roof on the porch over the garage. I have a three room apartment with no place for drying clothes inside and the place we have been using is the most convenient for us and the least noticeable from the street.

Joseph Caputo
Tenant

Appendix F — Exhibit A—9

Building Inspector's Report

Re: Emil Tutolo
16 Elizabeth St.
Blk 23 Lot 1A, 1B.

Buildings occupy practically full coverage of property. Clothes lines are on porches and on roof of Garage (Neatly kept).

Recommend that City Clerk issue a permit for clothes lines as existing.

Edw. J. Langeloh
Bldg. Insp.

9/6/61

Appendix F — Exhibit A—9

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 1, 1961 and inspection of property (owned) by Emil Tutolo at 16 Elizabeth St., Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F — Exhibit A—9

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated August 31, 1961 and inspection of property (rented) by Joseph Caputo at 16 Elizabeth St., Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—10

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner George A. Burpee

Street Address of Property Guion Road, Rye, N. Y.

Telephone Number WO. 7-2304

Date 9/1/61

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

See attached letter.

Edith W. Burpee

Appendix F — Exhibit A—10

Letter Annexed to Application

Guion Road
Rye, New York
August 28, 1961

Building Inspector, City of Rye
Square House
Rye, New York

Dear Sir,

In accordance with the provisions of Ordinance No. 12-1961 passed by the Common Council on August 16, 1961, we hereby request permission to continue to use a clothesline on the side of our property fronting on Grace Church Street.

The reasons for this request are as follows:

1. Our house faces away from Guion Road; therefore, to hang clothes on the side away from Guion Road would be to put them in our front yard.
2. With three small children, we would prefer to have the clotheslines near the house.
3. In order to minimize damage to the grass during the late winter and early spring we erected a pulley type clothesline from the kitchen porch to a nearby apple tree.
4. Our property is protected along Grace Church Street and Guion Road by a privet hedge approximately eight feet high, which effectively shields this clothesline from observation from the street.

If you wish any further information or would like to visit the premises, please feel free to call us at WI 7-4600 (office) or WO 7-2304 (home).

Very truly yours,

G. A. Burpee
Edith W. Burpee

Appendix F — Exhibit A—10

Building Inspector's Report

Re: George A. Burpee
Guion Road
Block 10, Lot 1A6

Property is located on the former Sackett property on the corner of Guion Road & Grace Church Street.

The house faces (fronts) facing the pond and the rear and garage abutts Guion Road. The driveway and garage is approximately 10′ below Guion Road and Grace Church Street. The house and garage is within a 8 to 10′ hedge which fronts on both Guion and Grace Church. The proposed clothesline will not be visbale from the streets.

I recommend the issuance of a permit, by the City Clerk, as requested.

Edw. J. Langeloh
Bldg. Insp.

9/6/61

Appendix F — Exhibit A—10

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 1, 1961 and inspection of property (owned) by George A. Burpee at Guion Road, Rye, N. Y. I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—11

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Mrs. E. I. Patrone (tenant)

Street Address of Property 9 Beck Ave., Rye

Telephone Number WO 7-3195

Date Aug. 31, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

This property has no back yard. Line is on side of house (Between Cottage).

Irene Patrone
Tenant

Appendix F

Exhibit A—12

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Joseph Puleo—Tenant

Street Address of Property 11 Beck Ave., Rye, N. Y.

Telephone Number WO 7-3804

Date September 1, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

We have no back yard it is a drive way

Joseph Puleo

Appendix F

Exhibit A—13

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street (General Ordinances Section 4-3.7)

Name of Property Owner Anthony Dest—Tenant

Street Address of Property 15 Beck Av.

Telephone Number WO 7-5738

Date Aug. 31, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

Lack of space on one side, roadway in rear

Anthony Dest

Appendix F — Exhibit A—13

Building Inspector's Report

Re: Irene Patrone, 9 Beck Avenue (Tenant)
Joseph Puleo, 11 Beck Avenue "
Anthony Dest, 15 Beck Avenue "
Block 65 Lots 72 to 75A

(Owner of Record: Rebah Realty Corp. 227 N. Regent St., Port Chester.)

These are 3 of 8 bungalows, converted from summer to all year round occupancy, on the northerly side of Beck Avenue, owned by Rebah Realty. They are in two rows with an access street between and ones facing Beck Avenue and the others in the rear.

The existing clothes lines are located between the buildings, which are situated about 8' higher than Beck Avenue.

It is in a very congested area and there is no other space available on the lot on which they are located.

I recommend that the City Clerk, under the conditions, issue a permit for the present locations.

Edw. J. Langeloh
Bldg. Insp.

Appendix F — Exhibit A—13

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated August 31, 1961 and inspection of property (rented) by Irene Patrone at 9 Beck Avenue, Rye, N. Y. I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 7, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F — Exhibit A—13

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 1, 1961 and inspection of property (rented) by Joseph Puleo at 11 Beck Avenue, Rye, N. Y. I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 7, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F — Exhibit A—13

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated August 31, 1961 and inspection of property (rented) by Anthony Dest at 15 Beck Avenue, Rye, N. Y. I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 7, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—14

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Mr. & Mrs. Thomas Galasso

Street Address of Property 12 Elizabeth St., Rye, N. Y.

Telephone Number WO 7-5269

Date Sept. 2, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

It is a hardship to hang clothes indoors because of limited space. The clothes do not dry fast enough indoors, we do not have adequate heating facilities to dry the clothes. Clothes have been hung out from our clotheslines for approximately 50 yrs.

Mrs. Virginia Galasso
Thomas Galasso

Appendix F — Exhibit A—14

Building Inspector's Report

Re: Thomas Galasso
12 Elizabeth St.
Blk 23 Lot 24

Topography of land such that clothes lines cannot be erected in rear yard, (Very rough & steep grades)

Present line run to a pole near street. Grounds well kept and rock gardens also well kept.

I recommend that the City Clerk issue permit as existing.

Edw. J. Langeloh
Bldg. Insp.

9/6/61

Appendix F — Exhibit A—14

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 2, 1961 and inspection of property (owned) by Thomas Galasso at 12 Elizabeth Street, Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—16

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner James D. Fraser

Street Address of Property 76 Palisade Road

Telephone Number WO 7-2764

Date Sept. 5, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

No other area available

James D. Fraser
per J D F

Appendix F — Exhibit A—16

Building Inspector's Report

Re: James D. Fraser
76 Palisade Road
Blk 62, Lots 6, 7.

This property is located on the southerly side of Palisade Rd. near Midland Avenue.

The lots front on Palisade Rd., The house is on lot 6, but has practically no rear yard.

The present clothes line is in the side yard. I recommend that the City Clerk issue a permit for the line in its present location.

Edw. J. Langeloh
Bldg. Insp.

9/6/61

Appendix F — Exhibit A—16

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 5, 1961 and inspection of property (owned) by James D. Fraser at 76 Palisade Rd., Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—17

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Joseph Saracino

Street Address of Property 61 Palisade Road

Telephone Number WO 7-6290

Date Sept. 5, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

There is no back yard, it is necessary to use side yard

Rubina Saracino
for
Joseph Saracino

Appendix F — Exhibit A—17

Building Inspector's Report

Re: Joseph Saracino
61 Palisade Rd.,
Blk 45, Lot 22.

This property is a small lot at the break in Palisade Road just west of Midland Avenue, has a width of 45′ and a length of approximately 85′ Average.

The present clothes lines extend from the rear porch to the garage. There is no other place on the lot for the lines.

I recommend that a permit be issued by the Clerk for the lines at their present location.

Edw. J. Langeloh
Bldg. Insp.

9/6/61

Appendix F — Exhibit A—17

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 5, 1961 and inspection of property (owned) by Joseph Saracino at 61 Palisade Rd., Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 6, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 13, 1961

Appendix F

Exhibit A—18

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Mr. & Mrs. A. Krupi

Street Address of Property 33 Orchard Dr.

Telephone Number WO 7-4369

Date Sept. 5, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

My line is now on the side of the house & I do not have the space in the back of the house.

Mrs. Eliann Krupi
Mr. Anthony Krupi

Appendix F — Exhibit A—18

Building Inspector's Report

A. Krupi
33 Orchard Drive
Blk 109 Lot 16, 17

Present line extends from the house to a garage in the side yard.

There is no better place available on the property for the line.

I recommend that a permit be issued for the line in its present location.

Edw. J. Langeloh
Bldg. Insp.

9/14/61

Appendix F — Exhibit A—18

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 5, 1961 and inspection of property (owned) by Anthony Krupi at 33 Orchard Drive, Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 14, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 15, 1961

Appendix F

Exhibit A—20

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Helen C. & Vincent J. Burke

Street Address of Property Corner Lavender Lane & Midland Ave.

Telephone Number WO 7-2841

Date Sept. 8, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

No other space available

Helen C. Burke

Appendix F — Exhibit A—20

Building Inspector's Report

Vincent J. Burke & W.
Midland and Lavender
Blk 25 Lots 1A3, N, O, & P.

Present clothes line is in the side yard and extends from the rear north corner of the house to a treet along the north side line.

The rear yard of the house is steep ledge rock, approximately 20′ In height. It is impossible to have the clothes line in the rear yard. Would recommend that the permit be issued for the clothes line in its present location.

Edw. J. Langeloh

Sept. 14, 1961.

Appendix F — Exhibit A—20

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 8, 1961 and inspection of property (owned) by Vincent J. Burke at Midland Avenue and Lavender Lane, Rye, I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 14, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 15, 1961

Appendix F

Exhibit A—23

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street (General Ordinances Section 4-3.7)

Name of Property Owner Mrs. Grace Belding

Street Address of Property 21 Palisade Road, Rye, New York

Telephone Number WO 7-3209

Date Sept. 11, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

Because I do not have a back yard to put a line. Also there is 5 persons living here and I take care of my 4 monuth old grandson who I wash every day for, and because of my heart I couldn't run up and down the stair to hang out my wash in the yard.

Mrs. Grace Belding

Appendix F — Exhibit A—23

Building Inspector's Report

Mrs. Grace Belding
21 Palisade Road
Blk 44 Lot 31.

Clothes line is located in the side yard, extends from the corner of the house to the tree on the easterly side of the property. The house is at least 50′ back from the front property line. There is no rear yard.

The present location is the only place where a line could be erected. I recommend that a permit be issued for the line in its present location.

_____

Bldg. Insp.

Sept. 14, 1961

Appendix F — Exhibit A—23

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 11, 1961 and inspection of property (owned) by Mrs. Grace Belding at 21 Palisade Road, Rye, I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 14, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 15, 1961

Appendix F

Exhibit A—25

Application to Permit Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Application to Permit Clothes Drying
Devices in a Front Yard or a Side Yard Abutting a Street
(General Ordinances Section 4-3.7)

Name of Property Owner Andrew & Evelyn Gallagher

Street Address of Property 63 Brown Ave., Rye, N. Y.

Telephone Number WO 7-1823.

Date Sept. 12, 1961

Explain practical difficulty or unnecessary hardship in drying clothes other than in front yard or side yard abutting a street.

Driveway across back & around 1 side of house. We have a dryer not a line behind shrubbery on Brown Ave.

Evelyn Gallagher

Appendix F — Exhibit A—25

Building Inspector's Report

Andrew Gallagher & W.
63 Brown Avenue
Blk 76 Lot 12.

Property is located on the northeast corner of Brown Avenue & Orchard Lane. The clothese drying rack is located between the house and garage, and surrounded by heavy screened planting. There is no better place available on the premises.

I recommend that a permit be issued for the line in its present location.

Edw. J. Langeloh
Bldg. Insp.

9/14/61

Appendix F — Exhibit A—25

Permit to Maintain Clothes Drying Devices in Yard

CITY OF RYE

OFFICE OF THE CITY CLERK

Permit to Maintain Clothes Drying Devices in a Front Yard or a Side Yard Abutting a Street

Upon review of an applicated dated Sept. 12, 1961 and inspection of property (owned) by Andrew Gallagher at 63 Brown Avenue, Rye I find that to require clothes drying other than in the location described in said application would create a practical difficulty or unnecessary hardship. I, therefore, approve the above-mentioned application.

_____

Building Inspector

Date Sept. 14, 1961

Pursuant to Section 4-3.7 of the General Ordinances and the above statement, a permit to maintain clothes drying devices as approved by the Building Inspector is issued and in effect until such time as he finds that the practical difficulty or unnecessary hardship no longer exists.

_____

City Clerk

Date Sept. 15, 1961

Appendix F

Stipulation Re: Defendants' Exhibit A at Trial

IN THE

SUPREME COURT OF THE UNITED STATES

MARION A. STOVER and WEBSTER STOVER,
Appellants,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Appellee.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that the annexed documents are true and correct copies of permit applications pursuant to Ch. 4, Art. 3, Sec. 4-3.7 of the General Ordinances of the City of Rye, correspondence, Building Inspector reports and determinations pertaining to said applications. Said documents were submitted in evidence in a folder designated as Defendants' Exhibit "A" during Appellants' second trial in the City Court of Rye, New York, on November 21, 1961. (Record on Appeal, p. 39). Anthony T. Antinozzi, Esq., by and on behalf of the People, submitted said documents to the County Court of Westchester County, State of New York at the time of oral argument before that court. Said documents were also submitted by said Anthony T. Antinozzi to the Court of Appeals of the State of New York at the time of oral argument before that court.

Dated: New York, New York, July 19, 1963

MORRIS L. ERNST
Attorney for Appellants

LEONARD RUBENFELD
Attorney for Appellee

APPENDIX G

Remittitur from Court of Appeals

No. 46

COURT OF APPEALS

State of New York, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 9th day of May in the year of our Lord one thousand nine hundred and sixty-three, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,
Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

REMITTITUR May 9, 1963.

THE PEOPLE &c.,

Respondent,

vs.

MARION A. STOVER and WEBSTER STOVER,

Appellants.

Appendix G

BE IT REMEMBERED, That on the 22nd day of February in the year of our Lord one thousand nine hundred and sixty-three, Marion A. Stover and Webster Stover, the appellants in this cause, came here unto the Court of Appeals, by Paul B. Zuber, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the County Court, Westchester County. And The People &c., the respondent—in said cause, afterwards appeared in said Court of Appeals by Leonard Rubenfeld, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Paul B. Zuber, of counsel for the appellants, and by Mr. Anthony T. Antinozzi, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the County Court, Westchester County, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals

aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the County Court, Westchester County, before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said County Court before the Judges thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, May 9, 1963.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(Seal)

RAYMOND J. CANNON
Clerk

APPENDIX H

Order for Execution of Judgments, County Court, County of Westchester, Dated May 22, 1963

At a Term of the County Court of Westchester County held at the Court House, in the City of White Plains, N. Y. on the 22nd day of May, 1963.

Present:

Honorable JOHN H. GALLOWAY, JR.

County Judge.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

against

MARION A. STOVER and WEBSTER STOVER,

Appellants.

The appellants herein, Marion A. Stover and Webster Stover, having been twice convicted in the Court of Special Sessions of the City of Rye, Honorable Richard T. Barber, C. J. of violations of Article 3, Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye, the said judgments of conviction having been rendered respectively on October 31, 1961, and November 21, 1961, and on both of such convictions the appellant Marion A. Stover having received a suspended sentence and the appellant Webster

Appendix H

Stover having been sentenced to pay a fine of $25.00 or, alternatively to be confined in the Westchester County Penitentiary for 8 days on the first such conviction and the said fine having been paid, and having been sentenced to pay a fine of $100.00 or, alternatively, to be confined in the Westchester County Penitentiary for 30 days on the second such conviction and he having elected not to pay such fine and having begun the said period of confinement; and the judgments of conviction having been appealed to the County Court of Westchester County, and a certificate of reasonable doubt as to the appellant Webster Stover having been issued by the Supreme Court, Westchester County, and the judgments of conviction having been affirmed by the said County Court; and the appellants by permission of Honorable James D. Hopkins, Associate Justice, Supreme Court, Appellate Division, Second Judicial Department, having appealed such affirmance to the Court of Appeals, State of New York, and a certificate of reasonable doubt as to appellant Webster Stover having been granted by Mr. Justice Hopkins; and the appeal having been heard in the Court of Appeals, and on May 9, 1963, a remittitur having been made by the Court of Appeals affirming the said judgments of conviction and remitting the matter to the County Court of Westchester County, it is

ORDERED AND ADJUDGED that the said judgment of the Court of Special Sessions be executed and that a commitment issue to carry said judgment of the Court of Special Sessions and of this Court and of the Court of Appeals into effect.

Enter:

/s/ John H. Galloway, Jr.

APPENDIX I

Order for Commitment of Webster Stover, Dated May 22, 1963

COUNTY COURT

WESTCHESTER COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

WEBSTER STOVER,

Appellant.

To the Sheriff of the County of Westchester, or to any Peace Officer of said County.

GREETING:

WHEREAS, the above named defendant, Webster Stover, having been brought before the Court of Special Sessions of the City of Rye charged with the crime of Violation of Art. 3, Ch. 4, Gen'l. Ordinance of the City of Rye having been tried in said Court and found guilty and adjudged to be committed to the Westchester County Penitentiary for thirty days or to pay a fine of $100.00, and the said Webster Stover having appealed from said judgment and conviction to the County Court of Westchester County,

and the appeal having been heard, and on the 21st day of August, 1962, an order having been made by said County Court affirming said conviction and judgment and directing that said judgment of the Court of Special Sessions be executed and that a commitment issue to carry said judgment of the Court of Special Sessions and of the County Court of Westchester County into effect, and the said Webster Stover having further appealed from said judgment and conviction to the Court of Appeals of the State of New York, and the appeal having been heard and on the 9th day of May, 1963, a remittitur having been made by the said Court of Appeals affirming the said judgment and conviction and remitting the matter to the County Court of Westchester County there to be enforced according to law and on the 22d day of May, 1963 an order having been made by the said County Court directing that a commitment issue to carry into effect the said judgment of the said Court of Special Sessions and of the said County Court,

Now, Therefore, you are hereby commanded to take the body of said Webster Stover into your custody and deliver him into the custody of the Warden of the Westchester County Penitentiary, there to be detained.

Witness: John H. Galloway, Jr., County Judge of Westchester County, this 22d day of May, 1963.

/s/ John H. Galloway, Jr.
County Judge of Westchester County

APPENDIX J

Stipulation and Consent for Substitution of Counsel

IN THE

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
Index Nos. 9301/1961, 10339/1961

MARION A. STOVER and WEBSTER STOVER,
Defendants-Appellants,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

State of New York
County of Westchester } ss.:

IT IS HEREBY STIPULATED AND CONSENTED that Greenbaum, Wolff & Ernst, Esqs., at No. 285 Madison Avenue, New York 17, New York, be substituted as attorneys for the defendants in the above entitled action in the place and stead of Paul B. Zuber, at Box 256, Croton-on-the-Hudson, New York, and that an order to that effect may be entered without further notice.

Dated: This 27th day of May, 1963.

/s/ PAUL B. ZUBER
Paul B. Zuber, Esq.
Attorney for the Defendants

/s/ MORRIS L. ERNST
Greenbaum, Wolff & Ernst
Attorneys to be substituted

/s/ MARION A. STOVER
Marion A. Stover, Defendant

/s/ WEBSTER STOVER

APPENDIX K

Notice of Appeal to the Supreme Court of the United States

IN THE

COUNTY COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

No. 9301/1961, 10339/1961

MARION A. STOVER and WEBSTER STOVER,
Appellants,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

I. Notice is hereby given that MARION A. STOVER and WEBSTER STOVER, the Appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Court of Appeals of the State of New York affirming the judgments of conviction of the County Court of Westchester of the State of New York which had affirmed the judgments of conviction of the City Court of Rye of the State of New York, entered herein on May 9, 1963.

Appendix K

This appeal is taken pursuant to 28 U. S. A. §1257(2).

Appellants were convicted of the crime of erecting and maintaining clotheslines in a front yard or side yard of residential premises in violation of Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye. Appellant Marion A. Stover received two suspended sentences and is not now in custody or enlarged on bail. On the first conviction Appellant Webster Stover was sentenced to pay a fine of $25 or to eight days' confinement and said appellant paid a fine of $25 on November 4, 1961. On the second conviction Appellant Webster Stover was sentenced to thirty days' confinement or to pay a fine of $100 and is not now in custody or enlarged on bail.

II. The Clerk will please prepare a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. People's Exhibit 1 and 2—Photographs.
2. People's Exhibit 3—Letter and Notice.
3. Defendants' Exhibit "A"—File of the Building Inspector's Office of the City of Rye containing twenty-eight (28) applications for permits and other data in connection therewith.

III. The following questions are presented by this appeal:

1. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional

and void because it suppresses speech in violation of the First and Fourteenth Amendments of the Constitution of the United States.

2. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional and void because, as applied, it suppresses speech in violation of the First and Fourteenth Amendments to the Constitution of the United States.

3. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye denies liberty and property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States because the regulation of clotheslines bears no reasonable relation to the regulation of public health, safety, welfare, morals and conduct and is therefore unconstitutional and void.

4. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional and void because the permit standard and procedure constitute a denial of due process in violation of the Fourteenth Amendment to the Constitution of the United States.

5. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional and void because it is a regulation of esthetics which denies liberty and property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

6. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional

and void because it denies the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

7. Whether Article 3 of Chapter 4, Section 4-3.7 of the General Ordinances of the City of Rye is unconstitutional and void because, as applied, it denies the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

GREENBAUM, WOLFF & ERNST
/s/ Morris L. Ernst
Morris L. Ernst, a member of the firm.
Attorneys for Marion A. Stover
and Webster Stover, Appellants.
P. O. Address:
285 Madison Avenue
New York 17, New York

I, LEONARD RUBENFELD, District Attorney of the County of Westchester of the State of New York, hereby acknowledge receipt of the foregoing Notice of Appeal to the Supreme Court of the United States this 28th day of May, 1963.

Leonard Rubenfeld
District Attorney
County of Westchester

APPENDIX L

Stay of Execution of Judgments

SUPREME COURT OF THE UNITED STATES

Before

Honorable STANLEY H. FULD
Associate Judge of the Court of Appeals of the State of New York

Index Nos. 9301/1961, 10339/1961

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

MARION A. STOVER and WEBSTER STOVER,
Defendants-Appellants.

The defendants, MARION A. STOVER and WEBSTER STOVER, heretofore on the 31st day of October, 1961 and on the 21st day of November, 1961, having been twice convicted of the crime of maintaining and erecting clotheslines on residential premises in the City of Rye in violation of Article 3 of Chapter 4, Section 4-3.7, of the General Ordinances of the City of Rye at two trials had at a Term of the City Court of Rye in and for the County of Westchester, State of New York, and two suspended sentences

of indefinite punishment having been duly passed and imposed upon the defendant, MARION A. STOVER, and sentence of $25.00 fine having been paid on account of the first conviction by the defendant, WEBSTER STOVER, and sentence of $100.00 or thirty (30) days' imprisonment having been duly passed and imposed upon the defendant, WEBSTER STOVER, on account of the second conviction, and upon appeal to the County Court of the County of Westchester, the judgments of conviction and sentences for the said crimes having been affirmed on the 21st day of August, 1962, and upon appeal to the Court of Appeals of the State of New York, the judgments of conviction and sentences for the said crimes having been affirmed on the 9th day of May, 1963 and a warrant having been issued for the immediate confinement of the defendant, WEBSTER STOVER, from the County Court of the County of Westchester on the 22nd day of May, 1963 and a stay of execution of said warrant until 12:30 P.M. on the 28th day of May, 1963 having been issued from the County Court of the County of Westchester on the 23rd day of May, 1963, and a further stay of execution of said warrant until 4:30 P.M. on the 31st day of May, 1963 having been issued from the County Court of the County of Westchester on the 28th day of May, 1963 for the purpose of allowing defendants to appear specially before a Judge of the Court of Appeals to obtain a further stay on account of defendants' having filed a notice of appeal to the Supreme Court of the United States with the Clerk of the County Court of the County of Westchester on the 28th day of May, 1963, and the defendants having made application to Justice John H. Galloway, Jr. for a stay of the judgments and the warrant

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on the 28th day of May, 1963, at the County Court of the County of Westchester in the State of New York, pending the hearing and determination of an appeal to the Supreme Court of the United States, and the defendants having been denied said application for said stay on the 28th day of May, 1963, and in order that the defendants may have an adequate opportunity to docket their notice of appeal in the Supreme Court of the United States, and in order to allow the defendants to preserve their rights on appeal without the determination of said rights becoming moot, upon application of Morris L. Ernst, Esq., of counsel for the defendants, it is

ORDERED, that the judgments and warrant heretofore issued herein on the 31st day of October, 1961, on the 21st day of November, 1961, and on the 22nd day of May, 1963 be and they hereby are in all respects stayed pending determination by the Supreme Court of the United States of its jurisdiction to entertain an appeal herein, and it is further

ORDERED, that the stay granted shall become inoperative and of no effect in any event immediately upon the expiration of the time to docket the appeal, if no appeal is then pending undetermined, and counsel for the defendants is directed to procure from the Clerk of the Supreme Court of the United States and to serve upon the District Attorney of Westchester County, New York, upon the Clerk of the County Court of the County of Westchester, and upon the Clerk of the Court of Appeals of the State of New

Appendix L

York, a certificate that the application or notice has been docketed; and it is further

ORDERED, that the original of this order be filed in the office of the Clerk of the County Court, Westchester County, New York, and that copies thereof be served upon the Sheriff of the County of Westchester, New York, the District Attorney of Westchester County, New York, and the Clerk of the Court of Appeals of the State of New York forthwith.

Dated: New York, New York, May 31, 1963.

STANLEY H. FULD
Associate Judge of the Court of
Appeals—State of New York

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IN THE

Supreme Court of the United States

October Term, 1963

No. 313

MARION A. STOVER and WEBSTER STOVER,
Appellants,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS

LEONARD RUBENFELD,
District Attorney, Westchester County
Attorney for Appellee
County Courthouse
White Plains, N. Y.

ANTHONY T. ANTINOZZI
Corporation Counsel of City of Rye
Of Counsel

INDEX

	PAGE
STATEMENT OF THE CASE	2
ARGUMENT	4
The federal questions presented are not substantial	4
1. The ordinance as applied is valid and there is no real abridgement of freedom of speech and press	4
2. Non-violent speech can under certain circumstances be prohibited because it works an injury to property	12
3. The ordinance herein does not in its purpose or effect prohibit free speech in violation of the First Amendment	14
CONCLUSION	17

TABLE OF AUTHORITIES

Cases:

American Communications Ass'n v. Douds, 339 U. S. 382	9
Bacon v. Walker, 204 U. S. 311	4
Berman v. Parker, 348 U. S. 26	5, 7, 12
Best v. Zoning Board of Adjustment, 393 Pa. 106, 141 A. 2d 606	13
Bibb v. Navaja Freight Lines, Inc., 359 U. S. 520	5
Burlington v. Dunn, 318 Mass. 216, 61 N. E. 2d 243	6

PAGE

C. B. & Q. Railway Co. v. Drainage Commissioners, 200 U. S. 561 4
Chaplinsky v. New Hampshire, 315 U. S. 568 ..... 8, 9
City of Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 3 So. 2d 364 7
City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 7
City of Sarasota v. Sunrad, Inc. (Fla.), 114 So. 2d 377 7
Clark v. Paul Gray, Inc., 306 U. S. 583 ..... 6, 14
Cochran v. Preston, 108 Md. 220, 70 A. 13 7
Commonwealth v. Trimmer (Pa.), 53 Dauph. Co. Rep. 91 7
Criterion Service, Inc. v. City of East Cleveland (Ohio App.), 83 N. E. 2d 300 6
Cusack Co. v. City Chicago, 242 U. S. 526 5

Day-Brite Lighting, Inc. v. Missouri, 342 U. S. 421 5
Dennis v. United States, 341 U. S. 494 ..... 8, 9

Farley v. Graney (W. Va.), 119 S. E. 2d 833 ..... 6, 7

General Outdoor Advertising Co. v. Indianapolis, 202 Ind. 85, 172 N. E. 309 ..... 7, 13
Gitlow v. New York, 268 U. S. 652 ..... 9, 14
Goldblatt v. Town of Hempstead, 369 U. S. 590 14
Gorieb v. Fox, 274 U. S. 603 5

Konigsberg v. State Bar of California, 366 U. S. 36 ..... 8, 10, 12
Kovacs v. Cooper, 336 U. S. 77 ..... 5, 9

Lincoln Building Associates v. Barr, 1 N. Y. 2d 413 14
Lincoln Union v. Northwestern Co., 335 U. S. 525 5
Lionshead Lake, Inc. v. Wayne Township, 10 N. J. 165, 89 A. 2d 693, appeal dismissed 344 U. S. 919 6

Murphy, Inc. v. Westport, 131 Conn. 292, 40 A. 2d 177 6

Opinion of the Justices to the Senate, 333 Mass. 773, 128 N. E. 2d 557 ..... 4, 7

PAGE

Poulos v. New Hampshire, 345 U. S. 395 9

Roth v. United States, 354 U. S. 476 6, 9

State *ex rel.* Carter v. Harper, 182 Wis. 148, 196 N. W. 451 7

State *ex rel.* Civello v. City of New Orleans, 154 La. 271, 97 So. 440 7, 13

State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N. W. 2d 217, cert. denied 350 U. S. 841 7, 13

State *ex rel.* Twin City B. & I. Co. v. Houghton, 144 Minn. 1, 174 N. W. 885, 176 N. W. 159 7

Stromberg v. California, 283 U. S. 359 9

Thompson v. Carrolton (Tex. Civ. App.), 211 S. W. 2d 970 7

Ware v. Wichita, 113 Kan. 153, 214 P. 99 7

Williamson v. Lee Optical Co., 348 U. S. 483 5

Other Authorities:

American Jurisprudence, Vol. 11, Constitutional Law, Sec. 280, p. 1040 6

Corpus Juris Secundum, Vol. 62, Municipal Corporations, Sec. 226(6), p. 438 6

McQuillin, Municipal Corporations, Vol. 8 (3rd ed.), Sec. 25.31, p. 67 7

Rathkopf, The Law of Zoning and Planning, Vol. 1, pp. 11-13 to 11-31 7

Rodda, The Accomplishment of Aesthetic Purposes under the Police Power, 27 So. Calif. L. Rev. 149 6

Sayre, Aesthetics and Property Values, 35 A. B. A. J. 471 13

IN THE

Supreme Court of the United States

October Term, 1963

No. 313

MARION A. STOVER and WEBSTER STOVER,

Appellants,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS

Appellee, The People of the State of New York, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeal herein on the ground that the appeal does not present a substantial federal question.

Statement of the Case

This is an appeal from an order of the Court of Appeals of the State of New York, entered on May 9, 1963, affirming the judgments of conviction of the County Court of Westchester County of the State of New York which had affirmed the judgments of conviction of the City Court of the City of Rye for violations of an ordinance prohibiting the erection and maintenance of clothes lines in a front yard or side yard abutting a street without a permit.

The appellants reside in a one-family dwelling, located at the corner of an intersection, in a residential district of the City of Rye. At the time of the violations, the appellants had erected and were maintaining six separate clothes lines across their front yard and side yard abutting a street, filled with tattered clothes, rags, old uniforms, underwear, scarecrows, etc. (Record on Appeal, pp. 36-37, People's Exhs. 1 and 2).

In 1961 the City of Rye adopted an ordinance prohibiting clothes lines in a front yard or a side yard abutting a street without a permit. The appellant, Marion A. Stover, applied for a permit to maintain the clothes lines in the front yard, but her application was denied because she had sufficient property available elsewhere for hanging clothes (People's Exh. 3). She did not appeal to the Board of Appeals which was permissible under the ordinance, and the appellants refused to remove their clothes lines from the front or side yards which were in violation of the ordinance (Record on Appeal, pp. 48, 49).

Upon the complaint of the Building Inspector, on two separate occasions, the appellants were found guilty of violating the ordinance. The violation of the ordinance constitutes an offense and not a misdemeanor. In both instances, Marion A. Stover received a suspended sentence, but Mr. Stover was fined $25 on the first conviction which he paid, and on the second conviction, he was sentenced to a fine of $100 or 30 days in jail (Record on Appeal, pp. 23, 57).

Upon appeal to the County Court of Westchester County, both judgments of conviction were affirmed (see court's opinion, Record on Appeal, pp. 58-70). Mr. Stover refused to pay the fine and was confined to the County Penitentiary. After 11 days of confinement, the appellants were granted leave to appeal to the Court of Appeals and a stay of the enforcement of the judgment. The Court of Appeals affirmed the judgments of conviction and rendered an opinion sustaining the validity of the ordinance (Appendix A).

The appellants had contended that they had erected and maintained the clothes lines as a protest of their assessments and taxes. Although they filed a protest on Grievance Day, they have never commenced a certiorari proceeding to review their assessments.

ARGUMENT

The federal questions presented are not substantial.

The questions presented by the appellants, based upon an alleged violation of the First and Fourteenth Amendments of the Constitution of the United States, are as follows:

1. Whether the application of an ordinance regulating aesthetics so as the prohibit peaceful, political protest is invalid as a restraint on freedom of speech and press.

2. Whether non-violent speech can be prohibited because it works an injury to property.

3. Whether the ordinance is invalid on its face because its alleged sole purpose and effect is to prohibit peaceful, political protest.

1. The ordinance as applied is valid and there is no real abridgement of freedom of speech and press.

a. The police power "embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety". *Bacon* v. *Walker*, 204 U. S. 311, 317; *C. B. & Q. Railway Co.* v. *Drainage Commissioners*, 200 U. S. 561, 592; *Opinion of the Justices to the Senate*, 333 Mass. 773, 128 N. E. 2d 557, 561. It "extends beyond health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well being and tranquillity of a community".

Kovacs v. *Cooper*, 336 U. S. 77, 83. "The concept of the public welfare is broad and inclusive. * * * The values it represents are spiritual as well as physical, aesthetic as well as monetary". *Berman* v. *Parker*, 348 U. S. 26, 33. The state legislatures are entitled to their own standard of the public welfare. *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423.

Aesthetic considerations are taken into account in regulating activities which may be carried on in various zones, in establishing setback lines, in requiring side and rear yard areas of specified sizes, in establishing minimum lot areas, in regulating look-alike homes, in imposing various requirements on subdivisions, in granting or refusing variances and special permits of various kinds, and in connection with many other matters. Rodda, The Accomplishment of Aesthetic Purposes under the Police Power, 27 So. Calif. L. Rev. 149, 155.

The exercise of the police power is entitled to the presumption of validity. *Bibb* v. *Navaja Freight Lines, Inc.*, 359 U. S. 520, 529; *Williamson* v. *Lee Optical Co.*, 348 U. S. 483; *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421; *Lincoln Union* v. *Northwestern Co.*, 335 U. S. 525. The Court of Appeals of the State of New York has sustained the constitutionality of the ordinance herein and its decision is entitled to the greatest respect and, in a case of this kind, it should not be interfered with unless it is clearly unreasonable, arbitrary and plainly wrong. *Gorieb* v. *Fox*, 274 U. S. 603, 609; *Cusack Co.* v. *City of Chicago*, 242 U. S. 526, 529. It can not be said that the ordinance has no rational basis to its objectives.

The court's function in reviewing an ordinance of a municipality is a narrow one. It does not decide whether the policy of the City is wise or whether it is based on assumptions that are scientifically substantiated. It can only inquire whether the City's action so subverts the fundamental liberties implicit in the Due Process Clause that it can not be sustained as a rational exercise of power. *Roth* v. *United States*, 354 U. S. 476, 501; *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 594.

b. It is well established that aesthetic considerations may be given due weight in connection with other factors which support the exercise of the police power, 11 Am. Jur., Constitutional Law, Sec. 280, p. 1040; 62 C. J. S., Municipal Corporations, Sec. 226(6), p. 438; *Burlington* v. *Dunn*, 318 Mass. 216, 61 N. E. 2d 243, 246; *Criterion Service, Inc.* v. *City of East Cleveland* (Ohio App.), 83 N. E. 2d 300 (not officially reported).

Courts have sometimes upheld ordinances on seemingly insubstantial grounds or discovered rather implausible physical interferences as reasons for regulations which are clearly predicated on aesthetic considerations. *Lionshead Lake, Inc.* v. *Wayne Township*, 10 N. J. 165, 89 A. 2d 693, appeal dismissed 344 U. S. 919; *Murphy, Inc.* v. *Westport*, 131 Conn. 292, 297, 300, 40 A. 2d 177; *Farley* v. *Graney* (W. Va.), 119 S. E. 2d 833, 844 (not officially reported); Rodda, The Accomplishment of Aesthetic Purposes under the Police Power, 27 So. Calif. L. Rev. 149, 155.

Recent developments in the law indicate a definite trend in support of the position that aesthetic considerations alone may justify the exercise of the police power, 11 Am.

Jur., Constitutional Law, Sec. 280, pp. 1139-1140; *City of Sarasota* v. *Sunrad, Inc.* (Fla.), 114 So. 2d 377 (not officially reported); *City of Miami Beach* v. *Ocean & Inland Co.*, 147 Fla. 480, 3 So. 2d 364; *General Outdoor Advertising Co.* v. *Indianapolis*, 202 Ind. 85, 172 N. E. 309, 312; *Ware* v. *Wichita*, 113 Kan. 153, 157, 214 P. 99; *State ex rel. Civello* v. *City of New Orleans*, 154 La. 271, 97 So. 440; *City of New Orleans* v. *Levy*, 223 La. 14, 64 So. 2d 798; *Cochran* v. *Preston*, 108 Md. 220, 70 A. 13; *Opinion of the Justices to the Senate*, 333 Mass. 773, 128 N. E. 2d 557, 561; *State ex rel. Twin City B. & I. Co.* v. *Houghton*, 144 Minn. 1, 14, 174 N. W. 885, 176 N. W. 159; *Commonwealth* v. *Trimmer* (Pa.), 53 Dauph. Co. Rep. 91; *Thompson* v. *Carrollton* (Tex. Civ. App.), 211 S. W. 2d 970 (not officially reported); *State ex rel. Carter* v. *Harper*, 182 Wis. 148, 158-159, 196 N. W. 451; *State ex rel. Saveland Park Holding Corp.* v. *Wieland*, 269 Wis. 262, 69 N. W. 2d 217, cert. denied 350 U. S. 841; *Farley* v. *Graney* (W. Va.), 119 S. E. 2d 833, 843-844 (not officially reported); McQuillin, Mun. Corp., Vol. 8 (3rd ed.), Sec. 25.31, p. 67; Rathkoph, The Law of Zoning and Planning, Vol. 1, pp. 11-13 to 11-31.

Ugly sights and discordant surroundings may be just as distressing to the average person's sensibilities as nauseous smells, *State ex rel. Carter* v. *Harper*, 182 Wis. 148, 159, 196 N. W. 451. A city is entitled to preserve and enhance the beauty, attractiveness and charm of its residential areas and maintain the quietude and rural character of the community. As this Court has said in *Berman* v. *Parker*, 348 U. S. 26, 33, "It is within the power of the legislature to determine that the community should be

beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

Appellants do not contest the right of the City to regulate for aesthetic reasons, but urge that the City's interest in aesthetics does not constitute the type of paramount interest required to justify a restraint of freedom of speech (Br., pp. 11-12). This Court should not be concerned with a frivolous claim of interference with speech or press.

c. The maintenance in the front yard of a residence of a half dozen clothes lines, filled at all times with tattered clothes, rags, underwear, etc., is not a form of speech within the scope of the First Amendment. It is not a medium of communication involving the transmission of messages or the discussion of public issues. Even if it is assumed to be such a form of speech, as it was assumed by the Court of Appeals (Appendix A, p. 8a), there is no real abridgement of freedom of speech. It is a frivolous claim to say that the appellants' bizarre form of "protest" is a medium of communication that should be protected against the greater interests of the community. Preservation of property values is a great deal more than just a "slender ground" as urged by the appellants. Zoning is principally predicated on the preservation and enhancement of property values.

The cases in this Court have recognized that freedom of speech is not an absolute, unlimited right, but on occasion must be subordinated to other values and considerations, *Konigsberg* v. *State Bar of California*, 366 U. S. 36, 49-50; *Dennis* v. *United States*, 341 U. S. 494, 503; *Chap-*

linsky v. *New Hampshire*, 315 U. S. 568, 571; *Stromberg* v. *California*, 283 U. S. 359, 368; *Gitlow* v. *New York*, 268 U. S. 652, 666. It does not give immunity to speak on any subject at any time. *Roth* v. *United States*, 354 U. S. 476, 483; *Poulos* v. *New Hampshire*, 345 U. S. 395, 405; *Dennis* v. *United States*, 341 U. S. 494, 534; *American Communications Ass'n* v. *Douds*, 339 U. S. 382, 394. "The preferred position of freedom of speech in a society that cherishes liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself". *Kovacs* v. *Cooper*, 336 U. S. 77, 88. The exercise of free speech is subject to certain reasonable restrictions.

The appellants' use of their property as a platform for the projection of speech necessarily involves the utilization of the streets for the transmission of their message to pedestrians, motorists and neighbors. In *Kovacs* v. *Cooper*, 336 U. S. 77, an ordinance prohibiting the use on public streets of sound trucks that emit loud and raucous noises was held not to infringe on the right of free speech. Although loud and raucous noises are not emitting from appellants' property, equally offensive utterances or messages therefrom are disturbing and distracting to the well being and tranquillity of the community.

The fallacy of the appellants' argument is aptly noted as shown by the following language of the concurring opinion of Justice Frankfurter in *Kovacs* v. *Cooper*, 336 U. S. 77, 96:

> "Some of the arguments made in this case strikingly illustrate how easy it is to fall into the ways of mechanical jurisprudence through the use of oversimplified formulas. It is argued that the Constitution protects freedom of speech: freedom of speech means the right to communicate, whatever the physical means for so doing; sound trucks are one form of communication; *ergo* that form is entitled to the same protection as any other means of communication, whether by tongue or pen. Such sterile argumentation treats society as though it consisted of bloodless categories."

This Court has consistently recognized that "certain forms of speech in certain contexts, have been considered outside the scope of constitutional protection" and that certain "general regulatory statutes, not intended to control the content of speech, but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First and Fourteenth Amendments forbade the legislators to pass". *Konigsberg* v. *State Bar of California*, 366 U. S. 36, 50-51.

The ordinance herein rests upon the police power of the City to promote the general welfare for the tranquillity and convenience of the community, the preservation of the beauty and orderliness of its residence character, unmarred by unsightly and offensive scenes, and the enhancement of its realty values. It is not aimed at speech or the content of speech. Any effect its action may have upon speech is purely incidental. There is no unreasonable burden or restriction in the use of appellants' property to compel them to use the rear yard or the other side yard. There is no rational basis why appellants' grotesque man-

ner of protesting their assessment should be given a preferred position as against the protection of the inhabitants from a form of speech which is offensive to their sensibilities and harmful to property values. The procedures for review of assessment of real property are well established, but appellants refuse to avail themselves of such procedures. The method used is legally ineffectual, and as the Court of Appeals stated "the value of their 'protest' lay not in their message but in its offensiveness" (Appendix A, p. 9a).

d. The Court of Appeals did not reject a traffic or health justification for the ordinance. It only said that although there may be considerable doubt whether there is a sufficiently reasonable relationship between clothes lines and traffic or fire safety to support the exercise of the police power, the ordinance may be sustained as an attempt to preserve the residential appearance of the City and its property values (Appendix A, p. 4a). Clothes racks in the front lawn, "permanently" filled with rags, can interfere with traffic visibility at corners or in driving out of driveways just as much as high hedges or billboards.

e. It is urged that the ordinance did not have to be enforced so as to apply to the appellants' "speaking lines". But the evil to be remedied and the objectives to be attained are the same whether the lines are ordinary clothes lines or "speaking lines". Moreover, the matter of enforcement would be extremely difficult as it would not be known which were "speaking lines" until a summons were issued and such a claim asserted, a claim which was asserted first on the appeal herein.

f. Appellants' suggested basis of distinction of *Berman* v. *Parker* (Br., p. 12) is erroneous. Though a violation of the Fifth Amendment was urged in that case, the test is the same whether a violation of the First or Fifth Amendment is claimed. It is still a question of balancing the interests of the public and the individual. Here, the ordinance bears no necessary relationship to speech and its effect thereon is incidental. It was not politically motivated as suggested by the dissenting opinion of the Court of Appeals (Appendix A, p. 11a).

The ordinance does not diminish the effective exercise of the right of free speech. There is no real abridgement of freedom of speech or press. The prohibition of the clothes lines in the front yard bears no necessary relationship to the freedom to speak, write, print or distribute information, or to its other reasonable dissemination.

2. Non-violent speech can under certain circumstances be prohibited because it works an injury to property.

Certain forms of speech causing injury to person and property are not protected under the constitutional amendments. *Konigsberg* v. *State Bar of California*, 366 U. S. 36, 50-51.

The exercise of the police power based on aesthetics is within the general welfare power of a city to protect the residential character of the community and the enhancement of property values. The regulation of billboards is based on the preservation of property values. The courts go to fantastic lengths to say that billboards directly injure morals while "the real reason for curbing

them is to preserve the general attractiveness of the city and especially to protect property values", Sayre, Aesthetics and Property Values, 35 A. B. A. J. 471, 472.

The police power may be utilized to foster the aesthetic side of municipal development to prevent things that offend the sense of sight in the same manner as things that offend hearing or smell. *General Outdoor Advertising Co.* v. *Indianapolis*, 202 Ind. 85, 172 N. E. 309. An eyesore in a residential area might be as much a public nuisance and as ruinous to property values in the neighborhood generally as a disagreeable noise, odor, or a menace to safety or health, *State ex rel. Civello* v. *City of New Orleans*, 154 La. 271, 97 So. 440, 444. The preservation of property values is a legitimate consideration since anything that tends to destroy property values necessarily adversely affects the prosperity and therefore the general welfare of the community, *State ex rel. Saveland Park Holding Corp.* v. *Wieland*, 269 Wis. 262, 69 N. W. 2d 217, 222, cert. denied 350 U. S. 841; *Best* v. *Zoning Board of Adjustment*, 393 Pa. 106, 141 A. 2d 606, 612. The prohibition of clothes lines in the front yard, filled with tattered clothes, rags, underwear, etc., does not present any imposing threat to the right of free speech. The unrestricted right "permanently" to maintain a half dozen clothes lines in the front yard filled with rags is very likely to cause serious injury to property values in the neighborhood in addition to offending the sensibilities of most inhabitants. Such a device is just as harmful as billboards and other signs in residential districts.

If harm develops from non-violent speech, there is no justification why it should not be regulated. The mainte-

nance of a half dozen clothes lines, filled at all times with tattered clothes, rags, old dresses, underwear, scarecrows, and other odd assortments of fabrics is not a "minor nuisance". Such uncontrolled use of the front yards would destroy the benefits of required setbacks and open spaces and, in a short time, create a slum appearance in a pleasant residential area limited to one family dwellings. The ordinance, though based on aesthetic considerations, proscribes conduct which offends the sensibilities of most inhabitants and tends to debase the community and reduce property values.

3. *The ordinance herein does not in its purpose or effect prohibit free speech in violation of the First Amendment.*

a. It is true that the evil that the ordinance was designed to remedy does not appear from its express words and there is no preamble, but it is not necessary to expressly describe the evil sought to be prohibited or regulated nor is a preamble necessary for the validity of an ordinance. A determination of the local legislative body involving the exercise of the police power must be given great weight and its determination is presumed to be constitutionally valid and supported by facts known to it or which could be reasonably assumed affords support for it, *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590, 596; *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 594; *Gitlow* v. *New York*, 268 U. S. 652, 668; *Lincoln Building Associates* v. *Barr*, 1 N. Y. 2d 413, 415.

b. The Court of Appeals did not pass on the question whether there was sufficient traffic or fire hazard to sus-

tain the ordinance, but sustained it solely upon aesthetic considerations. Although that court indicated some doubt as to the sufficiency of the other factors underlying the adoption of the ordinance, appellee respectfully submits that these other factors, while not necessary for the validity of the ordinance, are entitled to some weight. This ordinance seeks to provide clear visibility at street corners and in driving out of driveways and thus avoid or reduce accidents, to reduce distractions to motorists and pedestrians, and to provide greater opportunity for access in the event of fires as well as to enhance the value of properties. Certainly, the "permanent" maintenance of a half dozen clothes lines filled with tattered clothes, rags, uniforms, underwear, scarecrows, etc., in front yards of residential areas, are just as harmful as billboards at intersections, signs in residential districts, or obstructions or structures in the front yards.

There is no support in the record for the comment of the minority opinion in the Court of Appeals that the origin of the ordinance was political in nature (Appendix A, p. 11a). The appellants were the only persons who have continuously maintained the clothes lines in violation of the ordinance and have refused to comply at all times.

c. The fact that the ordinance herein was adopted as part of the General Ordinances of the City of Rye and added to a section of Article 3, entitled "Miscellaneous" of Chapter 4 thereof, entitled "Public Morals and Conduct" is wholly immaterial and of no significance as it was placed there as a matter of convenience. The ordinance regulates a certain land use—it prohibits the maintenance

of clothes lines in the front yard without a permit. It is clear and unambiguous. If there were any ambiguity, then its heading or context to other provisions might be relevant on a question of construction.

The City's architectural controls are contained in a separate local law and are not part of the Building Zone Ordinance. The nuisance provisions in the Sanitary Code are adopted as a "Miscellaneous" regulation of the Sanitary Code. Also, provisions as to public sewers are contained in the General Ordinances of the City of Rye (Section 4-3.5), and they are not any less effective or indicative of an ulterior motive because they are there rather than in the Sanitary Code.

d. The ordinance causes no undue hardship to any property owner as it provides for the issuance of a permit in the event of practical difficulty or unnecessary hardship in drying clothes elsewhere. The fact that the ordinance provides for such exceptions does not affect its validity. A procedure allowing for exceptions in the event of a practical difficulty or unnecessary hardship is a very common procedure in the regulation of land uses. It permits of a fair, reasonable and realistic enforcement of the ordinance without undue hardship to any property owner. To have done otherwise would have been blind adherence to form. Neither do such exceptions demonstrate that the ordinance was not founded on aesthetic considerations. A procedure allowing for exceptions where undue hardship might develop allows for better control and a greater attainment of the aesthetic and other objectives of the ordinance.

e. The fact that the ordinance is precisely and narrowly drawn, as noted by the Court of Appeals, is significant in weighing whether there is any real interference with freedom of speech. The practical operation of the ordinance demonstrates that it was founded upon aesthetic considerations and was not intended to interefere with appellants' rights of freedom of speech and press. It was designed to proscribe conduct which offends the sensibilities of the average person and tends to depress property values. It was also intended to improve visibility in the use of driveways and at intersections. The ordinance may have some incidental restraint because of the frivolous claim that the maintenance of a number of clothes lines in the front yard, filled with rags, is a form of speech which should be given a preferred position over the rights of others in the enjoyment of their property and the amenities of the community. Unquestionably the interests of the inhabitants of the community under the circumstances here are paramount.

Conclusion

The "permanent" maintenance of a half dozen or more clothes lines in the front yard of a residence and at a corner of an intersection, filled with rags, does cause injury to real estate values and offend the sensibilities of most inhabitants. There is no restraint of freedom of speech and press in violation of the First and Fourteenth Amendments.

Appellee respectfully submits, therefore, that the appellants present no substantial federal question for the decision of this Court and the Court should refuse to note jurisdiction in this cause and dismiss the appeal.

Respectfully submitted,

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